SASKATCHEWAN

REPORT
OF THE
OMBUDSMAN

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ELEVENTH ANNUAL REPORT

OF THE OMBUDSMAN

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SASKATCHEWAN OMBUDSMAN
2310 Scarth Street Regina, Canada S4P 3V7 (306) 565-6211

The Honourable The Speaker
of the Legislature
Province of Saskatchewan
Legislative Buildings
REGINA, Saskatchewan

Dear Mr. Speaker:

It is my duty and privilege to submit to you and to the Legislature, the eleventh Annual Report of the Saskatchewan Ombudsman, submitted in accordance with the provisions of subsection (1) of section 30 of *The Ombudsman Act.*

Yours sincerely

Ombudsman

PART I

HIGHLIGHTS

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GENERAL

- This is my seventh annual report to the legislative assembly and the eleventh for my office since *The Ombudsman Act* was enacted in 1972. This report covers the calendar year 1983.

- An Ombudsman's annual report differs considerably from the annual reports usually tabled with the assembly because it is a working part of his process for obtaining acceptance of his recommendations and for highlighting problem areas in government. By necessity, given the nature of his function, an Ombudsman's annual report concentrates on the negative aspects of the government's multitudinous contacts with its public. As even constructive criticism is regularly perceived as "political criticism", an Ombudsman's report can and generally does create some misunderstandings. Upon reviewing my earlier annual reports, I realize that many of the positive comments about particular programs and departments and agencies were made with either too much subtlety or were dispersed throughout the many case summaries included in my reports. As our work abounds with good and positive working relationships with the public service, I would like to cite a few of the examples we encountered in the past year:

  - In 1983, we resolved a very significant number of longstanding and important issues with the Workers' Compensation Board. Some illustrations of the Board's current approaches and attitude can be found in the cases reported later in this report. The Chairman of the Board and his new members are to be commended for their willingness to reconsider earlier Board decisions and for the objectivity they applied in so doing. I would encourage the members to refer to page 89 of this report for a more detailed comment on our compensation work this year.

  - I also wish to acknowledge the co-operation I received from the Department of Agriculture in the course of resolving many of the problems present with the former process for allocating crown lands and for hearing appeals from those allocation decisions. The amendments to *The Provincial Lands Act* enacted in the spring of 1983 and the policies that flowed from those amendments recognized, all but one, of the issues that I had raised in my Special Report on the subject. (July, 1982).

- There was also a significant increase in the responsiveness of certain sectors of government with regard to more individual and less dramatic complaints. For example, we received a somewhat larger than usual, number of individual complaints and problems involving the Department of Supply and Services and the Department of Revenue and Financial Services in 1983. Where we determined after investigation that the citizen had been wronged, senior staff of these departments acted promptly and thoughtfully on a number of occasions, to provide a remedy. Two examples of the co-operation we received are recorded at page 71.

- In several of my earlier annual reports, the Saskatchewan Housing Corporation was singled out for critical attention. While complaint volume against the corporation increased from 13 complaints in 1982 to 34 complaints in 1983, we encountered a much more co-operative attitude towards both the public and my office. While it may be premature to conclude that we have entered a new era in our relationship with this Corporation, the shift in attitude that we perceived in 1983 is certainly worthy of mention.

- Unfortunately, all the year's highlights were not positive. If I was asked to identify an area of government activity that dominated our time and concern in 1983, I would unhesitatingly nominate the Department of Social Services for this dubious honour. The problems identified through our complaints and investigations in 1983 covered virtually all aspects of the department's responsibilities and have involved very serious allegations involving its day care and child protection duties as well as its handling of social assistance applicants and recipients. In result, I have devoted **Part II** of this report to the problems we encountered with the Department of Social Services in 1983. I would encourage the members to give this part of my report careful consideration.

While many of the problems identified in the social services field were present in the system for some time, others were not. It should also **not** be assumed that because I have reported on this subject, that senior department officials are either unnecessarily debating our conclusions or that they do not share our concern. This is not the case. I am bringing these issues to the attention of the members for different reasons. These problems need immediate and thoughtful solutions and solutions that may require additional resources. While these problems may be a priority with the department, this may not be enough to ensure that necessary changes occur quickly. My comment in **Part II** of this report is an attempt to ensure that reforms in social service systems are more than a departmental priority. I have also reported on this subject to inform the members that problems in the social services field were a preoccupation of my office in 1983 and will continue to receive a priority in 1984.

- I have only to read my morning mail to see that senior public servants are still very much confused by the approaches and tests we apply in the course of reaching decisions on our files. Having dealt with these confusions on a case-by-case basis for a number of years, I thought it might be helpful to devote **Part III** of this report to clarifying our general expectations of the bureaucracy in its dealings with the citizens of Saskatchewan and to identifying the criteria we employ in testing those decisions. I have printed enough additional copies of this part of the report to ensure that sufficient copies find their way to every department and agency after my Annual Report is tabled in the Legislative Assembly.

- This report continues our practice of collectively rating the level of service provided to the public by major departments and agencies. Our 'star-rating chart' can be found in **Part IV** of the report along with a number of case summaries.

- Economic restraint and its affects are starting to impact on our complainants. The direct consequences of 'belt-tightening' in certain areas of government activity became more apparent as the year went on. From our perspective, the primary impact has been in the area of S.G.I. settlements, additional delay to the public in those departments and agencies that were established to assist the public, e.g. — Labour, Consumer and Commercial Affairs, Rentalsman, the Workers' Advocate etc., and in the entitlements of social assistance recipients.

What we perceive is a narrowing of certain discretions in certain systems and their replacement by hard and fast rules. Inevitably, a loss of discretion produces an equivalent increased potential for hardship. The need for a more "business-like" approach in commercial areas of government like S.G.I. or Consumer and Commercial Affairs may well be entirely appropriate, but adopting this approach in people oriented services such as social assistance or the Department of Labour's assistance to terminated employees or injured workers appears to be creating hardship for the persons least able to cope with the consequences of these rules. For the individuals who can find their way to my office and other resources, something can be done to better balance the citizen side of the issue. However, the overwhelming majority of those adversely affected are unlikely to be as fortunate.

A JURISDICTIONAL DISPUTE

- My office has had a prolonged jurisdictional dispute with S.G.I. over several years regarding our access to S.G.I. files in the course of investigating certain kinds of complaints from the public. In a sense, the dispute has been a "friendly" one as the issue only affected a half-dozen or so, of the several hundred S.G.I. investigations we conduct each year. Some years ago, I retained counsel and was in the process of referring this issue to the Saskatchewan courts for determination pursuant to section 16 of *The Ombudsman Act* when I learned of a similar issue between the Ombudsman for British Columbia and the British Columbia Development Corporation. The British Columbia Ombudsman lost his case in the first instance but this decision was reversed by the British Columbia Court of Appeal. The Supreme Court of Canada granted the Development Corporation leave to appeal to the Supreme Court of Canada and the Quebec, Ontario and Saskatchewan Ombudsmen were granted intervenant status at the Supreme Court of Canada. As the decision in this case may resolve some or all aspects of the current jurisdictional dispute with S.G.I., I have agreed to not refer the matter to the Saskatchewan courts until the Supreme Court of Canada has determined the British Columbia case. The appeal to the Supreme Court of Canada will be heard early in 1984 and I will inform the members of the consequences of that court decision.

CORRECTIONS

- The members may recall that problems in the provincial correctional centres were a priority of my office in the late 1970's. Our efforts in this area produced a number of significant changes in the internal procedures of the centres and a corresponding increase in annual complaint volume. In 1982 and 1983, we experienced our first significant decreases in complaints from the centres.

YEAR	TOTAL INVESTIGATIONS
1976	35
1977	56
1978	72
1979	79
1980	98
1981	118
1982	84
1983	79

I believe that credit for these decreases can be attributed to improved staff attitudes, improvements in the physical facilities and the very many internal system improvements introduced by the Corrections Branch over the past several years.

COMPLAINT VOLUME AND PRODUCTIVITY

- I reported in my 1982 annual report that the public had brought their complaints to us in record numbers. In 1982, our total complaint volume rose by almost 26% over 1981 and complaints against the provincial government had increased in the order of 10%. In 1983, our total complaint volume of 2,565 complaints, was less than 1982 (2,831) but still 13% higher than 1981. More significantly, the complaints against the provincial government again increased in 1983 to 1,162 complaints from 1,127 in 1982, while the complaints directed at non-provincial government sources of problems declined. As virtually all of our work activity and time is devoted to complaints against the provincial government, it can be seen that the office again faced an increased workload in 1983.

YEAR	COMPLAINTS AGAINST THE PROVINCIAL GOVERNMENT
1979	901
1980	879
1981	1,025
1982	1,127
1983	1,162

B.C. By Johnny Hart

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COMPLAINTS
PLAUDITS

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- In my 1982 annual report I also indicated that my staff had reached an all time high with regard to their collective productivity. I am pleased to report that some modest improvement has been made in this respect during 1983, but the steadily increasing volume of complaints and the exhaustion of internal management methods for increasing productivity further, have left us in a very vulnerable position. Yet again our office will be carrying more than 500 complaints against the provincial government into the next reporting year and the injection of additional resources to attend this backlog and to reduce unacceptable turnaround times on files is still very much needed.

YEAR	COMPLAINTS CLOSED AGAINST THE PROVINCIAL GOVERNMENT
1979	903
1980	732
1981	820
1982	1,253
1983	1,282

Over the history of the office, somewhere between 12 and 20% of the complaints we receive against the provincial government are found to be substantiated and requiring a remedy on an annual basis. The percentage of resolved and rectified complaints has varied over the years, but 1983 was a year in which we found a significant percentage of our complainants to be entitled to a remedy. In 1983, we resolved without formality, or rectified by way of recommendation, a total of 228 complaints, or 17.8% of the complaints we received against the provincial government. By way of comparison, the percentage last year was 15.1% and the percentage in 1981 was 14.9%. A more complete breakdown of the files we closed during 1983 can be obtained by looking at the statistics provided at pages 113 and 117.

LEGISLATION

- For the seventh consecutive time, needed amendments to *The Ombudsman Act* were put forward for consideration in 1983. For the first time since Bill 30 was introduced and died on the order paper in early 1982, there appears to be some reason for genuine optimism. It is anticipated that amendments to *The Ombudsman Act* will be introduced in 1984 and that the amendments will finally enable us to investigate the decisions of deputy ministers and other permanent heads. Until this legislative restriction is removed, the Saskatchewan public will have a more limited right for a potential remedy than that which exists in eight other provinces.

BUDGET

- In my 1982 annual report I emphasized the threat to the integrity of my office if Budget Bureau recommendations had been accepted. Fortunately, the recommendations were not accepted and funds for my office for the fiscal year 1983-84 were approved in the following amounts:

Salaries —	$537,860
Travel —	16,860
Other contractual services —	79,450
Material, supplies and equipment —	6,870
TOTAL	$641,140

Given the backlog of outstanding investigations and continuing increases in complaint volume, the sums approved for 1983-84 necessitated further economies. The steps we took to ensure that we could operate within the funds available included:

- reducing our vehicle complement.
- eliminating almost all out-of-province travel.
- postponing the introduction of toll-free lines to Regina office.
- eliminating purchases of office equipment, reference materials and periodicals.
- drastically limiting the purchase of independent medical and other consulting opinions.
- reducing printing costs by one-third.
- eliminating all hirings of casual or temporary employees and summer law students.

A significant part of last year's annual report was devoted to the potential risk of fiscal control by the executive branch of government over an agency of the legislature such as the Ombudsman's Office. I recommended on that occasion, as well as in several earlier annual reports, that the budget of the Ombudsman be reviewed by an all-party committee of the House chaired by the Speaker, i.e. — the Board of Internal Economy. As amendments to *The Ombudsman Act* will be necessary to effect this change, it is hoped that the amendments scheduled for the spring session of the legislature in 1984 will include an amendment to shift the responsibility for budget review from the Department of Finance. This is an issue related to the independence of the office and I would encourage the government to consider the approaches already adopted by Ontario and Alberta with respect to the budget of their Ombudsman.

OUTREACH

- We opened toll-free lines to the northern half of the province in June of 1982 and will be offering a similar service to residents of the south in late 1984. The lines to the north have proved to be very successful and have permitted us to limit our northern travel primarily to travel required for investigational purposes. In spite of a relatively slow start, we have received over 1,800 calls on this line in the first eighteen months of its operation, or approximately 100 contacts from the public per month.

We also continued our program of opening a temporary office for a day or an evening in various parts of the province. Although restraints limited this program somewhat, we still managed to hold meetings during the year in Beauval, Buffalo Narrows, Canora, Cut Knife, Humboldt, Maple Creek, Moosomin, Shellbrook, Swift Current and Wollaston Lake.

FORMAL REPORTS

- There were 91 occasions in 1983 when substantiated complaints were not resolved at an early stage of our process. In these situations, formal recommendations are required by *The Ombudsman Act* to be provided to deputy ministers and other permanent heads and if necessary, to ministers and cabinet for consideration and acceptance. By December 31, 1983, 45 of the 91 recommendations had either been accepted or finally denied. Of the 45 recommendations resolved by the end of the year, 38 had been accepted and implemented.

REPORTS TO CABINET

- Due to the need to pause in 1982 because of the change in government and the need for decisions on our work involving reforms to the method by which agricultural lands were allocated by government, more reports were submitted to cabinet in 1983 than in previous years. The reports to cabinet were eight in number and involved five reports on agricultural subjects and three involving workers' compensation cases and issues.

  These reports were submitted pursuant to the provisions of *The Ombudsman Act* on March 16, 1983 and final decisions had been received on all but one of these files by December 31, 1983.

  By early April, one of the compensation recommendations had been accepted and by early June, I was advised that a majority of my recommendations on another compensation case had also been accepted. The third compensation case is still technically outstanding but I have learned that one of my two recommendations has been accepted. In this file, compensation has been paid to our complainant but a government position on the reforms to the system that I am recommending has not yet been communicated to me.

My reports and recommendations involving agricultural issues have not been as successful. Three of the five agricultural complaints submitted to cabinet were a sample of eight cases that remained outstanding when the government accepted my recommendations for reforms in the system for allocating crown lands. While the majority of my system recommendations were accepted, specific redress for the individuals who had been harmed by the previous system was being denied. In other words, the department was willing to improve the system but not to assist the members of the public who had suffered because of the former allocation and appeal process. Reports were presented to cabinet as the amendments to *The Provincial Lands Act* had not yet been introduced and there was still hope that the new appeal board would have the legislative authority to reconsider some of the harsher decisions of its predecessor board. When the legislation was introduced in the spring of 1983, there was **no** provision for a reconsideration of old cases and this clearly constituted a decision to not accept my recommendation to reconsider these eight files.

The two remaining agricultural reports were on a different subject and because of the department's new farm purchase policy, one of the reports became academic. The other report to cabinet involved a legal issue and my recommendation was not accepted. The members can read this report by turning to page 97.

STAFF

- Again, I must give real credit to my staff for their capacity to cope with an increased caseload while maintaining last year's level of productivity. This is no mean feat at the best of times and this is not the best of times. Frankly, I don't believe we could sustain our current level of effort without the comfort of being able to continue our 'independent' approach to the public's problems. In my view, our attitudinal separation from the public service is a fact and it needs to be legislatively recognized if our current productivity and momentum is to be sustained.

REGINA

Gordon K. Mayer — Solicitor to the Ombudsman
W. Kenneth Barker — Assistant to the Ombudsman (Regina)
Earl A. McKeen — Chief Investigator
Murray Knoll — Investigator
Blair Herbert — Investigator
Carol Siekawitch — Intake Officer
Joan Uhren — Executive Secretary
Lana Stefan — Clerk-Typist
Nolene Driol — Clerk-Typist

SASKATOON

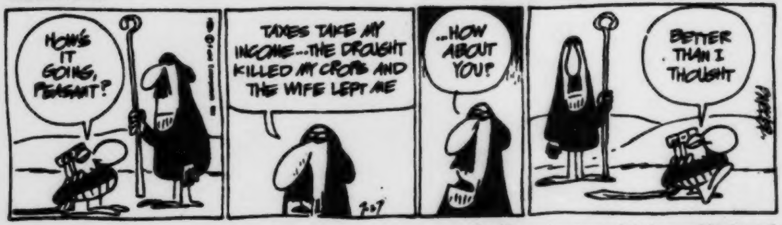
Gil R. Thomson — Assistant to the Ombudsman (Saskatoon)
Ray Wahl — Investigator
Glenda Cooney — Investigator
Joni Sereda — Intake Officer
Joyce Strate — Clerk-Typist
Colleen Neville — Clerk-Typist (Temporary)

MY IMPRESSION OF THE REPORTING YEAR

On the premise that one picture is worth a thousand words . . .

WIZARD OF ID

By Brant Parker and Johnny Hart


HOW'S IT GOING, PEASANT?
TAXES TAKE MY INCOME...THE DROUGHT KILLED MY CROPS AND THE WIFE LEFT ME
...HOW ABOUT YOU?
BETTER THAN I THOUGHT

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PART II

THE DEPARTMENT OF SOCIAL SERVICES — A COMMENT ON SOME CURRENT PROBLEMS

PART II

THE DEPARTMENT OF SOCIAL SERVICES — A COMMENT ON SOME CURRENT PROBLEMS

Because of the department's diverse responsibilities and many "people" contacts, it has always been a major contributor to our total caseload. For example, we conducted 262 investigations and inquiries involving the department in1982 and even with the departure of the Corrections Branch (and its 79 investigations) to the Department of Justice, we still received 217 complaints against the department in 1983. However, my reason for devoting a portion of this report to social services problems is not related to increases in complaint levels. A certain amount of "belt-tightening" in the Social Assistance Plan likely made an increase in our complaints inevitable. This part of the report was prompted by issues, not by numbers.

While there have been past annual and public reports which focused on certain aspects of the department's operations, our work in 1983 indicated serious problems in **three** major areas of departmental responsibility, i.e. — day care, child protection and social assistance. As these are sensitive issues which might well generate public reports in 1984, I felt obliged to provide the members with an early indication of the problems we are encountering.

1. DAY CARE

This is not a new cause for concern. In 1979, my annual report included a case in which we identified a number of problems involving day care centres, including the department's practise of licensing day care centres before they met the standards established by the Day Care Regulations. As a result of this investigation, the department revised the Day Care Regulations and its application procedures.

I also found it necessary to release an Ombudsman Report to the public in March of 1981 that identified serious gaps in the department's approach to complaints from parents and others regarding corporal punishment and the use of isolation in a specific day care centre. I recommended that the department no longer 'hand-off' these kinds of complaints to the boards of day care centres and that the Day Care Branch directly and immediately investigate all such cases. In specific terms, two of my recommendations were:

"1. THAT the departmental policy of dealing with day care centres and their boards on an arms-length basis be clearly and immediately qualified where allegations are received by the department involving corporal punishment or isolation so as to impose a duty on the department to fully and directly investigate all such complaints.

2. THAT this duty be legislatively recognized in the day care regulations and that the regulations be immediately reconsidered for this purpose."

In response to my Report the then Minister of Social Services indicated publicly, as follows:

"1 & 2. This recommendation has been accepted fully and the **Department's present policy is to investigate all allegations of corporal punishment or isolation. Regulations are being drafted which set out the Department's responsibility in this area** and the sanctions the department can apply in cases where corporal punishment and isolation are confirmed.

It may be five months before such regulations can be passed as amendments to *The Family Services Act*, . . ."

"3. Regulations are being drafted which will confer upon the Department the authority to amend, or otherwise change the license of existing centres or homes found to contravene the day care regulations. Conditional and provisional licenses as well as the power to suspend or alter existing licenses will form part of this package.

As noted above, the time period for such changes could involve some five months."

(emphasis added)

Not only have the promised amendments to the Act and regulations **not** been introduced in the past two and a half years, but the approach of the department regarding its duty to investigate has resulted in inquiries by the Day Care Branch that appear to be 'investigations' in name only. To illustrate the inadequacy of their investigations, I will share a part of the contents on one of our closed files on this subject:

#82-23000-30-01

This complaint was lodged by a parent user of a Regina day care centre after he had been unsuccessful on several occasions in obtaining a proper investigation by the department of his concerns about a day care centre. He had characterized his complaints as "abuse", "neglect" and "mistreatment". In particular, he had asked the department to investigate by interviewing staff, parents, ex-staff, ex-members of the day care, etc. This had not been done.

After I provided notice of my intention to investigate I received a response for the then deputy minister that was very similar to the last letter received by our complainant from the Day Care Branch. This letter, in part, read as follows:

> "I am satisfied that all of the incidents described in Mr. X's letter were properly handled by the parent board . . . **The parent board at ________ Day Care Centre and the Day Care Branch staff have all managed this situation in an appropriate and professional manner."**
>
> (emphasis added)

In sharp contrast to the then deputy's assurances, the information developed by our investigation created a very different impression. In the course of our investigation we interviewed several former employees of the centre who provided the following information:

"1. That requiring older children to 'sleep with the babies' and to cover their head with a blanket was used as punishment with regard to ________ and another youngster. Former staff members indicated that both the director and the senior staff worker had laughed about it when they made young ________ submit to this.

2. The former employees provided two examples of where children had been force-fed as a matter of punishment and attributed this to the senior staff worker, and stated that on one occasion, the director was also present. For example:

> They indicated that a female child became sick in the course of the morning while she was eating her cereal and although she kept throwing up, the senior staff worker persisted in making her eat. This process continued for almost

two hours and staff were not allowed to clean up the table. When one of the former employees attempted to intervene, she was reprimanded by the senior staff worker and even though it was 11 a.m., before the child had finished her attempts at eating, she was then required to eat lunch, and threw up again. Apparently, the senior staff worker refused to believe that the child was ill. It was later learned that the mother had subsequently taken the child to her family doctor and that the child had been prescribed medication for her illness.

3. Allegations were received with regard to corporal punishment that included the hanging of small children out of windows by their heels by staff, refusing to permit children to go to the bathroom, severe spankings and the squeezing together of childrens' fingers when they misbehaved.

4. Although there was not an isolation room, isolation was invoked as punishment and the following examples were provided:

   a) Children were often made to remain in a corner by themselves for extended periods of time.

   b) They were sent to spend time in the basement — alone.

   c) Children were made to stand alone in the corner of the play yard while being forbidden to make any contact with any of the other children. This occurred regardless of the weather.

   d) Children were required to go down into the basement and lay on the cold, cement floor with nothing but a light blanket.

5. That there was no supervision of the children in the play yard on some occasions and that the group that the senior staff worker was responsible for were often left unattended while the director, assistant director and the senior staff worker went for extended coffee breaks.

6. The staff were continually being threatened by the director, assistant director and the senior staff worker, to the effect that they were never to breathe a word of anything outside of the centre with respect to what was going on in the centre.

7. A concern about maggots at the garbage site just behind the home; diaper pails not having covers on them and infestations of insects in the kitchen area."

Because of the seriousness of these allegations, my investigator met with a senior member of the Day Care Branch and conveyed our new information. This was done on the assumption that the department would finally investigate the complaints. Instead of objectively investigating, the department arranged a meeting of the Board of the Day Care on the next business day at which the Board dismissed the director, a senior staff member and two other staff members. Again, drastic steps were taken without a proper investigation.

As another day care investigation was being considered at the same time as this one and as it would provide an adequate basis for a substantial number of recommendations, I merely made findings on this file. My findings were to the following effect:

> "For the reasons stated, my findings are reasonably obvious and not especially relevant given the fact that the day care centre is under a different board and with different staff. However, findings adverse to the department are clearly indicated as the department and branch literally made two early and serious errors in judgment.
>
> Initially, the branch failed to adequately investigate the parent complaint in November and again, in December/January. **If the branch had done so, it would have obtained the same information that we obtained.** If a proper investigation had been conducted initially, the problems associated with the operation of this facility and in particular, those concerns relating to situations where the department has an obligation and duty to investigate would have been determined in December 1981 or January 1982, rather than in July of 1982 because of our intervention.
>
> Additionally, a proper investigation involving the allegations and information conveyed by my investigator to the branch in June again did not occur. Again, a proper investigation within the meaning of the department's general undertaking to me of March of 1981, did not take place.
>
> **If you believe a response is indicated, please do so by December 9, 1983. If not, please be advised that you may treat this file as**

> concluded although our findings in this file are in part, support for our recommendations in the _________ Day Care file."
>
> (emphasis added)

Until such time as the department exhaustively investigates allegations involving isolation and corporal punishment and meets its three-year-old commitment to bring in legislative change to confirm this duty and adds to its licensing remedies pending the outcome of investigations, there will continue to be some potential risk to children in **some** day care centres. In 1981, the department agreed to dispense with parent questionnaires as a mode of investigation and to accept my recommendation that individuals be personally interviewed. I was obviously mistaken in my assumption at that time that there was no need to further spell out just what constitutes a proper investigation. This has now been clarified by my recommendations with regard to the above case and others. Additionally, I am now recommending **that the department's duty to investigate be broadened to include any allegations it receives involving mistreatment or unacceptable discipline.**

One cannot properly investigate these kinds of allegations through telephone contact with a limited number of individuals. All sources must be contacted and the information upon which branch decisions are based cannot be third-party information or hearsay. Corroboration is an essential part of the exercise and the department should ensure that it has the capacity to conduct **objective and professional investigations.** There is also a **need to shift the onus** on these investigations. Parents who lodge complaints with the department should **not** have to prove the allegations. They lack the contacts and information to do so. If allegations are received the onus must be on the administration and Board of the Centre to disprove the allegations. To do anything less is to jeopardize the well-being of some children.

2. CHILD PROTECTION

The field of child protection is another very sensitive area of departmental responsibility and one where significant improvements in some areas have been made over the past several years. As most of our investigations are still underway, it is not appropriate to comment in a specific way either with respect to the issues in these files or the recommendations that are currently outstanding. However, I again feel that the members are entitled to be informed that this is a priority area for the Ombudsman, that there has been an increase in complaints involving protection issues and that the emphasis of the complaints we have been receiving has changed considerably over the past two or three years.

Until a few years ago, the majority of the complaints we received were from the parents of children who had been apprehended by the department as being children in need of protection. As *The Family Services Act* requires a judicial determination of the future status of these children, I was satisfied that the Ombudsman was not the most viable remedy for these individuals and deferred to the courts.

In direct contrast to the earlier complaints, most of the child protection complaints that we have been receiving for the past several years involve allegations of mistreatment of children in the care of the minister rather than in the care of their natural parents. More recently, the allegations and complaints have involved a shocking array of mistreatment allegations involving children in foster care and occasionally, in institutions and pre-adoptive placements.

I also received a series of very serious allegations in 1983 from a former legal advisor to the department with regard to files that we had under investigation. Because of the seriousness of those allegations, I found it necessary in one of our cases, to test those allegations by re-tracing many of our investigative steps by conducting hearings and formally summonsing witnesses and obtaining their testimony under oath. Seven witnesses have testified but the department is not prepared to permit their former solicitor to testify unless a court order authorizing his testimony is first obtained. The department is claiming solicitor-client privilege on any testimony by him and unless an accommodation can be reached it looks as though this file will not be concluded until the issue is litigated. Accordingly, reporting upon this matter in detail is something that will have to be dealt with in a later report.

To provide the members with an illustration of the nature of the investigations that are currently underway, I would refer you to a 1980 case that was formally closed in February of 1983. The complaint against the department involved its role in the suicide of a 13 year old girl. The complaint was substantiated in part, but recommendations became redundant as the department has recognized its responsibilities and subsequently committed very significant resources in an attempt to narrow the risk and reduce the possibility of the reoccurrence of a similar tragedy.

#80-23000-50-10

This complaint against the Department of Social Services' child protection services highlighted deficiencies in the department's procedures for dealing with and responding to children (and families) in urgent need of professional assistance.

This was a case of considerable complexity but, in summary, the department learned that a teenage girl **might** be the victim of abuse at home. A protection worker was assigned to her case and it was determined that the teenager was resentful of parental discipline, but there were no outward signs of abuse. The girl herself did not want the department worker to contact her parents, and her "case" was quietly monitored over the next several weeks.

The young girl's situation came to particular notice again when the protection worker learned through a third party that she was again complaining of physical punishment at home but, as before, she insisted that the worker not connect with her parents. However, her complaints were such that the case worker felt she had no choice but to meet with the parents since the girl would not return home, she was technically apprehended and placed in a foster home.

The record shows that the parents had a lawyer call the department eight days after the apprehension, they had heard nothing from the worker in that time and, indeed, she did not call them until two days later, after the girl had failed to return to the foster home at night. A week later she stayed out again from the foster home, this time for three days until she was located by her father. The picture is one of a young girl who was discovering that rules do not exist only at home and it is certain she felt the weight of the foster home restrictions.

It was perhaps this which prompted her to accede to her father's request to return home on this occasion, but this did not work out. An emergency worker with the department agreed that she return home even though he was not familiar with her case. After three days at home the girl called the worker from the street late in the evening, wanting to go home but apprehensive about her reception, as her father seemingly sought to have her returned to the foster placement. The father called the department as he wanted someone to visit the home and help straighten things out, but no worker attended that night or the next day. At this time the regular worker had gone on vacation and the family were dealing with a 'different' emergency worker with, obviously, a limited understanding of the situation.

Four days later the girl called again from the street, asking to be taken to a foster home as her father had "kicked her out". The worker suggested she would do better to go home as it was late and they could work things out later. The girl agreed and went home, but she took an overdose of a relative's medication during the night and died in hospital the next morning.

Shortly after, the father complained to my office that the department's intervention in their family's affairs had led to his daughter's suicide and he asked why they (the parents) had not been consulted about any concerns over their daughter's safety, why she was not given counselling, presuming this was needed, why she was apprehended in the first place, and why she was kept in the same foster home after absconding.

While teenage suicides are difficult, if not impossible, to predict, the contact, or rather the lack of contact, between the worker(s) and the girl and her family appears to have had considerable significance in the development of this tragedy.

The parents complained that the worker did not contact them for over a week after the "apprehension", indeed not until after their lawyer had called. While this may not be unduly significant, in that the girl herself had initiated the apprehension by refusing to go home, the delay could not have helped in this family's situation, as the parents were understandably shocked by what had happened and were anxious about what was to become of their daughter. At the very least, it gave the parents a very negative impression of the department although this was seen as a non-emergency case of family conflict rather than as a case of abuse and urgent protection.

The parents continued to be unimpressed when the worker didn't know about the daughter's first absence from the foster home and when she absconded later and was found by her father, but the most significant gaps occurred after the regular case worker went on vacation and her "clients" were "taken over" by other workers. It was the emergency worker who didn't respond to the father's appeal for the worker to visit and "straighten things out" and who urged the girl to return home on the occasion of her second telephone call from the street, although she said her father had kicked her out and she wanted to go back to the foster home.

There are so many "ifs" in this case that it is just not possible and it would be quite unfair, to place **all the blame** for the girl's death on the workers. From the slow development of the case, not forgetting the girl's reluctance to involve the department, from the lack of any hard evidence of abuse and from her own manipulation of both her parents and the workers, she did not, by all accounts, present as a possible suicide.

It is critical, however, in my mind, that when the case came to a head the department's response was dictated more by the emergency worker's lack of familiarity with the case than by anything else.

My particular view of the case was reflected in my correspondence with the deputy minister and his response on this issue. Ultimately, my findings were to the following effect:

1. THAT there should have been contact with the parents during the eleven day period immediately following the apprehension;

2. THAT there was not any adequate backup during the protection worker's vacation;

3. THAT there was a continued lack of response by the department during the four days immediately preceeding the girl's death.

The deputy minister corresponded on the significant steps taken by the department since, and as a result of, the tragedy. Specifically, his letter stated:

> "In the region, a new system has been set up to deal with after hours crisis. The Crisis Intervention Centre, a private agency, came into existence in the fall of 1980. Staff of that agency handle calls for help from Department of Social Serv-

ices clients. Sometimes they contact the Department of Social Services case worker if the situation demands it. The staff of the agency make direct contact with persons in distress and work with them until they are satisfied the person is no longer in danger. They are trained to recognize suicide risks and have resources available to meet the needs of their clients.

In another development, the Department of Social Services in ________ is in the process of decentralizing its protection services. Units of workers now confine their efforts to a specific area of the city. In the near future we will have an office on the east side and another on the west side, in addition to our city centre office. We hope this will give our workers the capacity to deliver a more personal service with greater sensitivity to persons living in their area. We hope that smaller work units will make it less likely that children at risk will not have their needs met.

In addition, ________ region has had a significant increase in staff to deal with child protection issues. This occurred in 1981 and enabled many workers to pay more attention to a smaller number of clients. This is especially important when dealing with youth.

Provincially, the Department of Social Services developed a new manual in early 1982. It contains detailed procedures and policy for dealing with child protection cases. The case review section requires that supervisors do regular case reviews with workers. The attached pages from the manual indicates the requirements for a caseload review with a supervisor when a worker is taking a leave from his/her caseload.

A major step to update the ability to workers to deal with children in risk situations occurred in1982 with the implementation of three weeks of training for every protection and child care worker. Conducted by the American Humane Association, these sessions provide an intensive concentration on the psychological dynamics of families of troubled children and on techniques to deal with them.

The changes listed here are major ones for _______ region and for the Department of Social Services. Provincially, we

> realize we cannot prevent all suicides, but we hope that the changes we have implemented in the past two years will help to address this kind of situation."

In the course of closing this file as a substantiated complaint, I indicated as follows:

> "While our investigation necessarily involved the whole spectrum of factors, our conclusions and findings can only be related to actions or inaction by provincial government departments and agencies. For example, in the present case one could not conclude that the department was responsible for the death of ________ or even primarily responsible. On the other hand, the department's actions and reactions in 1980 were flawed in some respects and may well have had a minor role to play in the tragedy. Indeed, the steps taken by the department since the event indicates that there was a feeling of some responsibility if not culpability, by the department. The steps taken by the department are definitely improvements in a system that by its very definition, cannot be perfect.
>
> I am entirely comfortable with the department's response to the problem and for that reason will not be making any recommendations. Obviously, the department is in the best position to detect weaknesses in its own system and to make initiatives tailored to the need. However, I feel I would be remiss in closing this file as a not substantiated complaint in the circumstances."

Perhaps nothing could have prevented this young girl from taking so desperate a course, but it is very difficult to accept that improvements to systems should need such tragic urging.

3. SOCIAL ASSISTANCE

Over the years, we have developed quite a catalogue of problems with the Social Assistance Plan, the unevenness of its interpretation by department staff in different regions and problems associated with appeals from the S.A.P. decisions. As these issues arose on a case-by-case basis, I found it very difficult to obtain department acceptance of my recommendations for general system changes. Fortunately, a decision was made by the department in early 1983 to formally review the Social Assistance Plan. As our comments were invited by the Special Advisor to the Minister, we collected our intake experience on the practical problems being encountered by the public **and** the still unresolved issues that arose out of our investigations of social service complaints over the years.

My primary concern at the moment is that the flaws in the administration of the Social Assistance Plan be rectified as well as reviewed. In order to encourage needed changes, and to inform the members as to our concerns, I am reproducing here, an extract from the submission I provided to the department in May of 1983 and some actual case summaries of cases closed in 1983.

"Re: REVIEW OF SASKATCHEWAN ASSISTANCE PLAN

> I was most pleased to receive your letter inviting me to comment on our experience with the Saskatchewan Assistance Plan. I have asked for comments, recommendations, criticisms, etc., from my staff, and having received a good deal of information I will try to highlight the comments made by my staff. I will do so by separating to the extent possible, our collective and general impressions from the issues formally addressed as a direct result of our investigations.
>
> **A. OUR CLIENT FEEDBACK (i.e. INTAKE, ETC.)**
>
> COMPLEXITY OF THIS PROGRAM
>
> It seemed to all concerned that the program overwhelmed the majority of persons applying for benefits. Comments ranged from the complexity of the application form to the lack of information given to the client applying for assistance.
>
> Confusion amongst recipients was created as a result of different interpretations being placed on the regulations by different social workers. The program lacks universality in that different regions interpret the regulations differently.
>
> Clients are provided benefits in one region that would not be allowed in other regions. Special needs are granted to one client but not to others.

POTENTIAL FOR ABUSE, FRAUD, ERROR

The complexity of the Plan and high case-loads will without doubt, result in human error. In addition, lack of co-ordination between various service delivery organizations can often lead to confusion and delays.

Another major concern results from the lack of centralization of information and delays in getting information from other regions. This can create hardships for clients who move from one region to another, in that often the file doesn't reach the region for a number of days and hence, there usually is a delay in providing benefits.

PUBLIC ACCOUNTABILITY

The balance between public accountability and client independence is a delicate one. On one hand the department must be accountable to the public for the expenditure of funds. On the other hand, is the need to promote client independence as well as to maintain client confidentiality. This is especially the case where the disclosure of the client's status could jeopardize employment or housing opportunities.

We have also noticed a lack of recognition by other government 'agencies' of the expenditure of public funds. For example, Sask-Tel and Sask-Power will terminate service of social service clients when a call to the worker could remedy the situation. This necessitates a hook-up charge which the department ultimately pays on behalf of its client.

ADVERSARIAL NATURE OF BENEFIT ASSESSMENT PROCESS

The fact that the S.A.P. program requires an eligibility test, by definition, creates an adversarial process between the client and the department. The department attempts to insure that only eligible clients receive assistance and on the other hand, clients are required to demonstrate need.

One of the things that we see is the use of discretion by the individual worker. For example, a client will present himself and request assistance. The worker or eligibility officer will deny assistance. No application form is completed and no information is provided to the client as to his rights of appeal. While this doesn't occur in all regions, it does occur in some. The result being that certain eligibility criteria is being established which may or may not be in accordance with the Act and regulations.

The adversarial nature of the process is quite apparent where the client appeals. Often the client's worker represents the department on appeal, advancing the position of the department. The client, rightly or wrongly, sees his worker in an adversarial situation rather than in an allied situation. Once the appeal is completed, the relationship of social worker and client is difficult to resurrect. The client, should he lose his 'appeal' will look to his worker as the cause of his difficulties rather than at the appeal board.

We have also heard clients describe their inability to contact their worker, and also some frustration with the changeover from one worker to another. We have clients who have had three or four different workers in periods of less than a year. This creates confusion and some frustration, not only for the clients but for the workers as well.

CLIENT DEPENDENCE ON SOCIAL ASSISTANCE

Obviously, the goal of the Plan is to provide temporary assistance to persons, who through no fault of their own, find it necessary to seek public assistance and that sooner or later, with or without the assistance of the department, return to a status where they are self-supporting. I assume that given a choice, no one wants to be on assistance and I'm sure that almost all of your clients would prefer to be self-supporting.

Obviously, there are persons on assistance, who for one reason or another, will probably remain on assistance for the rest of their life. There are others who are there because of the present economic system and for whom assistance is only temporary.

While some may argue that benefits paid to clients are too high, and as such provide a disincentive to "getting-off" assistance, I do not subscribe to that theory. What the Plan may do is discourage persons from attempting to become self-dependent by taking away the fruits of their labour. For example, the department has taken the view that self-employed persons are not entitled to the income exemption.

ALIENATION OF CLIENTS AND MISUSE OF CAPACITY OF STAFF

As previously mentioned, the turn-over of staff leads to confusion and frustration. Unfortunately, staff turn-over is a fact of life and one which we may have to learn to live with. While there are things that can be done to maintain staff, the issue, as I see it, is the consistency of the service. Clients may be able to cope with changing staff, but with a new worker, different methods, interpretations, etc., new difficulties can be created between client and worker.

There also appears to be a question as to the necessity of degreed B.S.W. staff performing accounting functions as opposed to functions for which they are trained. It has been suggested that where only financial issues are involved, the necessity of a degreed B.S.W. is often not necessary and that skilled persons would be better utilized where their skills are needed.

B. OTHER ISSUES IDENTIFIED IN THE COURSE OF OUR INVESTIGATIONS

1. UNFAIRNESS IN THE S.A.P. DENIAL AND APPEAL PROCESSES

- Claimant's **right to a S.A.P. application** and an appeal not recognized in all regions.
- Claimant's **right to be informed in writing** as to his or her rights of appeal not recognized in all regions.
- Claimant's **right to a decision and reasons in writing** after his or her appeal not recognized at the local level in all areas.

- The Social Services Appeal Board's tendency to strictly construe the S.A.P. regulations and to not fully exercise the kinds of discretions available to it so as to soften the impact of the strict application of the regulations and procedures at the local level.
- The legal impossibility (without legislative change) of the Social Services Appeal Board being able to reconsider its own decisions even in cases where it made an error. In these circumstances, persons have to again go through the full appeal process.
- The basic unfairness to claimants in appeals based on the adversarial system in the rural regions where welfare advocates are not available to assist the S.A.P. appellant.
- Making it necessary for S.A.P. appellants to travel to the appeal board rather than the other way around. This regularly creates claimant inconvenience and a host of reimbursement and claims issues related to the costs to the S.A.P. claimant in appealing.
- The Appeal Board's apparent reluctance to look at special needs situations.
- The practice of encouraging 'revolving-door' appeals on the same issue because any 'fresh' monthly denial of benefit can entitle a S.A.P. claimant to another series of appeals.

2. The departmental practice of invariably recovering overpayments from persons who regularly cannot afford the monthly deductions and even doing so where the 'fault' if any, for the overpayment, was exclusively with the department.

3. A lack of insight in the regions into certain categories of special need cases, e.g. — the acute allergic conditions identified in my 1982 Annual Report.

4. A too-paternalistic approach in some regions to persons in the 16-18 year-old bracket, and especially, the single mothers in this age group.

5. The pre-occupation (due to lack of resources) in the S.A.P. system with 'cheque-writing' as opposed to preventative counselling services, e.g. — we have seen examples of S.A.P. problems that became child protection problems at least in part, due to a lack of financial support to the family unit.

6. S.A.P. decisions that violate the mobility rights guaranteed by Canada when it became a signatory to the Universal Declaration of Human Rights, see 1977 Annual Report of the Ombudsman, page 28.

CONCLUSIONS

As discussed, the collective comments set out in this letter are more a catalogue of problems than a documented piece on those problems or the possible solutions. Examples of these problems could be documented if necessary. However, I was under the impression that it might be a waste of time to do so as you will likely be getting a similar reading on problem areas from the other groups that you have been consulting in the course of this project. I have also attempted to not promote any particular philosophy or approach in the course of these comments."

SOCIAL ASSISTANCE AND HUMAN DIGNITY

"Everyone, as a member of society, has the right to social security, and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."

Article 22, Universal
Declaration of Human Rights

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

Article 12, Universal
Declaration of Human Rights.

S.A.P. applicants and recipients are **entitled** to be treated with ordinary courtesy and respect. This is not always the case and I encourage the members to give the following examples careful consideration.

#83-23000-40-42

A 15-year old girl had experienced personal difficulties with her parents and left home. The Department of Social Services became involved at this point and the girl was placed in Dale's House in Regina. The department had apparently intended to work with the family to reconcile their differences but before they started the process, this young lady left Dale's House and remained "underground" until her 16th birthday.

At age 16, she contacted the department to seek assistance. Present departmental policy states that children between the ages of 16 and 18 years of age may apply in their own right for assistance **if** they provide a written statement from their parents indicating that the parents are unwilling to support them. However, the policy also stated that **"the refusal of the parents to sign such a statement should not be grounds for refusing assistance".**

This young woman was advised that she was not eligible for social assistance **unless** the department received the required letter from her parents. In response, she advised the department that she was unable to obtain a letter and, additionally, the department was advised verbally by the parents that they would **not** provide the letter. This did not change the department's decision and having been denied social assistance, this young woman was left to her own resources for a further four months until she again applied to the department. Again, she received the same response. Some months later (in March of 1983) she contacted my office for help. At this point, the department re-assessed her needs and situation and placed her on assistance **without** a letter from her parents.

As it was already department policy to **not** refuse assistance because of the absence of a letter from parents, I advised the department that my recommendation was simply that they ensure that they follow their own policy guidelines with regards to 16 to 18 year old persons. The department's response to my recommendation stated:

> "Under the circumstances, **in order to prevent conflict and alienation within the family,** the financial assistance unit made a decision to refuse ________'s application for financial assistance."
>
> (emphasis added)

I do not quarrel with the argument that the department has an obligation to maintain the family unit wherever possible. However, in this situation the department had not offered any counselling **or** financial assistance. It was revealed by my investigation that the department had never offered counselling assistance to this young girl or even accepted the offer made by her parents to meet to discuss the situation at an early stage of her contact with the department. Refusing assistance at a much later date as a method of forcing her to return to her parental home was not in my opinion, an adequate response to the situation or a valid reason for the denial. Had temporary assistance been provided at any time and followed up with counselling, considerably less "conflict and alienation within the family" could have resulted.

In short, this young woman had approached the department on several occasions and had received no help. To make matters worse, she was denied because the department misapplied its **own** rules. Then for us to be told that the final denial by the **financial assistance unit** was a belated attempt to effect a family reconciliation stretched my credulity to the breaking point.

As our complainant was now receiving benefits, I concluded this file on the basis of the following findings:

1. THAT Ms. ________ had been wrongfully denied social assistance.

2. THAT the department failed to adequately counsel and assist Ms. ________ with respect to family reconciliation or anything else; and

3. THAT the department erred by making a decision based on either a misunderstanding or a misapplication of the express policy for applicants in the 16-18 year old age group.

#83-23000-40-31

In March of 1983 I commenced an investigation on behalf of the relatives of a deceased social assistance applicant with respect to past denials of financial assistance to her by the Department of Social Services. The family alleged that the deceased had been improperly and unfairly dealt with by the department. The family was also seeking financial remuneration from the Department of Social Services for the services which they had provided to the deceased prior to her death.

The investigation focused on the client's eligibility at the time of her various applications to the department. The files indicated that the client first contacted the department in **mid-April of 1981.** Recordings suggested that the client had just left her common-law husband. The client stated that she had been residing with her "husband" in a home which was jointly owned by them. She further stated that she and her sister were joint owners of a second house but once again, the client stated that she could not reside with her sister. Recordings of the social worker indicated that this client "kept dozing off" during the interview and that she had "numerous sores on her hands and face". At this time, the client was advised that she was not eligible for assistance due to her common-law relationship notwithstanding the fact that this relationship had ended.

This complainant again contacted the department at the **end of June of 1981** advising that she was not residing with her brother. She had stated that she had sold her share of her sister's house to her brother for $1.00 and wished to apply for assistance. An application was subsequently accepted from the client in **early July of 1981.**

In her application she declared joint ownership of the house with her common-law spouse as well as the sale of her share of the house which was jointly owned with her sister, to her brother for the sum of $1.00. She was requesting financial assistance to pay for rent and groceries at the home which she was now renting from her brother. The department issued a requisition for $20 as the client claimed that she had no groceries. The client and her brother were advised to provide legal documentation concerning the two properties in which the client had joint ownership.

This client again appeared at the offices of Social Services at the **end of July** of the same year. The recordings made on the file by the interviewing officer were to the following effect:

> "Her appearance was appalling . . . her sores on her hands and face were open and running. Her face was plastered with makeup. Her clothes were very dirty. Her legs had sores on them. She advised she had nothing to eat. Another requisition was issued."

By this time, the department had also received a report from the client's physician describing her problems as "bleeding duodinal ulcer and cerebral atrophy (organic brain syndrome)". She was assessed as requiring Level III care and was merely placed on a waiting list for a nursing home.

On **August 7, 1981**, the deceased applicant again approached the department and again left with only a $25 grocery voucher. The worker's recording on the file stated:

> ". . . the old lady who is your client, came for a requisition. I couldn't find the file. While I was looking for her file, she almost had her bowel movement in my office! Luckily she restrained herself. I didn't waste any time in issuing her a $25 requisition for groceries. She will probably contact you on Monday."

In spite of this poor woman's obvious physical and mental problems, the department again denied assistance and sent her a refusal letter overfull with references to sections of the regulations, etc. Fortunately, in at least one respect, this woman was shortly thereafter certified as mentally incompetent and a new application for assistance was prepared on her behalf by the Administrator of Estates. The inquiries and information gathered by the Administrator of Estates clarified the situation and Ms. ________ finally went on S.A.P. until her death in the fall of 1982.

After a complete review of this file, it was my view that the client **had been eligible** for social assistance on her earlier applications. Information on the department files confirmed that the client had great difficulty in caring for herself and this was further demonstrated by the fact that the client was declared mentally incompetent. Furthermore, investigation of the client's alleged interest in the two properties later revealed that she was unable to realize any benefit from these alleged assets, due to their being owned jointly with other persons. Had the Department of Social Services taken any steps to assist this unfortunate applicant, they would have easily been able to determine her eligibility **at a much earlier date.**

Although I was satisfied that the deceased had been eligible for social assistance from the start, I was unable to conclude that her family should be the beneficiary of the unpaid benefits. I concluded this case by advising the department of my adverse findings without making any recommendations with respect to the monies she would have received if her applications had received adequate consideration.

This woman's physical and mental state was known to the department and borne out by subsequent events. She was treated without dignity and received no assistance, financial or otherwise, from her very many contacts with the department other than an occasional food voucher.

#83-23000-40-40

While this complaint was not concluded by the end of 1983, I have exercised my discretion to include this case in my annual report as it provides a different example of the kind of insensitivity that we encountered this year in the Saskatchewan Assistance Plan system.

This case involved a middle-aged farm worker who, as a result of a farm accident in 1980 had his leg amputated at the knee. He was on and off assistance as required until November of 1982, when he received an insurance settlement cheque from S.G.I. in the amount of $6,900.

Our client contacted the Department of Social Services early in February of 1983 as his insurance settlement had been spent to clear up debts which had accumulated since the accident. This gentleman again required social assistance to meet his basic needs. The social worker interviewed him and issued him with the materials that needed to be completed so that his needs could be assessed. Our client was requested to complete and submit these forms in the usual way. However, the worker did not realize that this gentleman was **illiterate.** While the fact of his illiteracy was available on the file, his worker was not aware of this. The next day this gentleman withdrew his application. I am certain that a contributing factor to his decision to withdraw the application was a frustration with a request for written information which he was not able to provide.

My office became involved at this time and we attempted to explain this gentleman's situation and to outline the disposition of the monies from his S.G.I. settlement. Benefits had been refused because the department was not satisfied that the disposition of his insurance settlement had been proper. My office was later successful in convincing the department that the information on which they based their decision was not accurate. The department then reinstated benefits.

Ultimately, I also recommended that where clients have difficulty communicating either verbally or in writing, the file should be so designated that it is apparent to any worker that needs to see the file. In this regard, the department indicated that they are gathering information to develop an appropriate mechanism for use throughout the department. When this has been developed, our file will be closed.

#83-23000-40-05 & #83-23000-40-15

These two files were dealt with collectively as there were many similarities in these cases. Both files involved young women in the 16 to 18 year old age group who were in financial difficulty and encountering serious problems in obtaining assistance. Additionally, the department officials had chastized both of these applicants for approaching my office with their problems. In the one case, the applicant had been provided a bus ticket to her former home in Alberta rather than a S.A.P. application and in the other case, the applicant had not been informed as to her appeal rights. After investigation, the conclusion was irresistible that these young ladies had been treated with unacceptable paternalism and that they had in fact been criticized for approaching my office. They also had encountered assistance problems that could have been overcome if the department had been sensitive to their needs.

As these complainants were **now** receiving assistance, my recommendations were system oriented. The recommendations were forwarded to the department in late October of 1983 and accepted by the deputy minister in mid-November. My recommendations were:

"1. THAT the **right** of all applicants to a S.A.P. application be acknowledged by the department and THAT adequate steps be taken by the department to ensure this right is recognized by **all** social services regions.

2. THAT the **right** of all applicants who are denied assistance to receive reasons in writing for the refusal, be acknowledged by the department and THAT adequate steps be taken by the department to ensure that this right is recognized in **all** social services regions.

3. THAT the **right** of any applicant to an appeal where he or she has been refused assistance be communicated in writing to every denied applicant along with adequate information in writing to enable the applicant to launch an appeal within the time limit for doing so. THAT the department acknowledge this right and take adequate steps to ensure that this right is recognized in **all** social services regions.

4. THAT an applicant who has appealed has the **right** before his/her appeal is heard to know the case he/she has to meet and may request and receive all file and other information relevant to the reason for the original denial. THAT the department acknowledge this right and take adequate steps to ensure that this right is recognized in **all** social services regions.

5. THAT the department issue a directive to all staff cautioning against any adverse comment whatsoever to clients on their decisions to make resort to community resources, lawyers or the Ombudsman on their S.A.P. problems."

It is hoped that the directives that the department has undertaken to issue and implement will bring more consistency than presently exists between the various social services regions and that it will go some way to ensuring that S.A.P. applicants possess certain minimum rights of access to the S.A.P. system.

#83-23000-40-54

In April of 1983 I received a complaint from a lady who was receiving benefits under the Saskatchewan Assistance Plan. Her primary complaint was the fact that her benefits were paid to a trustee on her behalf and that she did not believe that this was necessary.

During the course of our investigation, we learned that this person had been declared by the courts to be incapable of managing her own affairs and that an individual had been appointed by the court as her committee (trustee).

As the courts had determined that this client should have a trustee appointed to administer her financial affairs, I decided that this aspect of the complaint was not substantiated. However, information obtained during the course of our investigation established that an overpayment had been assessed against this woman by the Department of Social Services. She had been escorted by police from her home to the psychiatric ward of a local hospital in January of 1983. She remained there for a month and at the time she left the hospital, it was decided that she should reside in an 'approved home', rather than returning to her own suite. The local mental health clinic assisted in locating an approved home and the client moved to this home in mid-February of 1983.

As this client's rent had already been paid by Social Services for the month of February at her previous suite, the department issued an overpayment against her for the "duplicate accommodation monies" that had been provided during the month of February. The amount of the overpayment was $100.80, and a recovery rate of $5 per month from her net social assistance (comfort allowance) of $35 per month was established.

Without deciding whether the rate at which the department recovered the overpayment created hardship for the client, I questioned the propriety of assessing any overpayment at all in these circumstances. Not only was this individual unable to manage her own affairs, as evidenced by the court order and her hospitalization, but also she had no say whatsoever in the move or the timing of her move, to an approved home.

I advised the Deputy Minister of Social Services of my findings and proposed that the overpayment be rescinded and that any monies received by the department on account of the overpayment be returned to her. I further proposed to the department that it amend its policies so that overpayments would not occur in circumstances such as these.

By letter dated November 23, 1983, the deputy minister confirmed that the overpayment had been rescinded and the deducted monies returned to her. Additionally, the department agreed to review the policy and make appropriate changes as soon as possible.

#83-23000-40-26

In February of 1983, I opened a complaint involving a denial by the department of a request by a S.A.P. recipient to be reimbursed for the travel, accommodation and meal expenses involved in attending her brother's funeral in Nipigon, in northern Ontario. Her brother had been killed in a car accident.

Initially, the department took the position that her children could not accompany her and that it was only prepared to provide "one round trip bus ticket from Regina to Whitewood", i.e. to the Saskatchewan border. Her request for meals and accommodation was denied as was her full transportation costs and any transportation or other costs for her children. As funerals will not await the appeal of denied applications, our complainant borrowed some money from friends and went to the funeral at her own expense.

Upon her return she appealed the denial and the local appeal board granted transportation monies in the amount of $240. The department's position on this subject could be found in the report it prepared for the appeal hearing. It stated:

> "There are not specific regulations regarding the provision of transportation for relatives to attend the funeral of immediate relatives. **The Department, for compassionate reasons, has at times allowed for transportation costs within the Province for recipients to attend the funerals of immediate relatives.** The Department in this regard attempts to provide what other families on limited incomes would be able to do. This likely would exclude children attending or high cost travel outside the Province."
>
> (emphasis added)

In the course of our investigation, it was confirmed by a senior staff member that it was the policy of the department to only grant travel money within the province and that "attendance at a funeral is not compulsory". This staff member went on to provide an interesting rationale for her interpretation that travel costs would not be paid for travel outside of Saskatchewan's borders. She explained that according to the department's policy manual, the department won't pay to transport deceased persons beyond the borders of the province and that the transportation of 'live' persons should be subject to the same kind of restriction.

As the expenses ultimately authorized by the department at the appeal were reasonable, albeit barely reasonable, I then concentrated on the apparent conflict between the department's position that there was no specific regulations or policy regarding travel to funerals and the fact that the 'unstated' policy limited transportation expenses to within provincial boundaries.

By letter dated **May 31, 1983**, I pointed out the confusion in the policy and asked for clarification while expressing concern about the unwritten or 'operational' policy apparently in place. By letter dated **June 17, 1983**, I was advised by the department that the "policy" may have been improperly applied in the first instance and that the region had been asked to review their practice. On **June 27, 1983**, I wrote suggesting that the problem could exist in other regions and suggested that a clear policy be included in the S.A.P. policy manual. On **July 18, 1983**, the department responded in the following terms:

> "This matter is currently being reviewed by my officials in order to more clearly define the criteria under which transportation allowances may be granted to bereaved recipients. **I am hopeful that these guidelines will be developed in the near future** so that they can be distributed to our regional staff as soon as possible. A copy will, of course, be forwarded to you."
>
> (emphasis added)

It is fortunate that this file did not go to our closed files as at the time of writing this report, I am still waiting for a copy of the revised policy.

P.S. On January 23, 1984, I received a copy of the revised policy and guidelines.

PART III

OMBUDSMAN DECISIONS — A PRIMER FOR PUBLIC SERVANTS AND OTHERS

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OMBUDSMAN DECISIONS — A PRIMER FOR PUBLIC SERVANTS AND OTHERS

There is no doubt that the basis for our decisions in favour of our complainants is not always understood by public servants. While the confusion can be eliminated on a case-by-case basis with time and discussion, this may not be the most effective use of our time. This confusion prompted me to attempt to clarify our approaches and expectations and to ensure that this article is given wide circulation within the public service.

By and large our process is very straightforward and the key to understanding our expectations combines some familiarity with Section 24 of **The Ombudsman Act** and an awareness of the three basic tests that we apply to the facts, as developed by my investigators. In its simplest terms, the tests are:

1. WAS THE ACT, DECISION OR RECOMMENDATION 'LAWFUL' IN THE STRICT LEGAL SENSE AND PROPERLY AUTHORIZED BY THE APPLICABLE LEGISLATION AND REGULATIONS?

2. WAS THE ACT, DECISION OR RECOMMENDATION ARRIVED AT IN A 'PROCEDURALLY' FAIR WAY?

3. WAS THE ACT, DECISION OR RECOMMENDATION IN ACCORDANCE WITH THE OTHER 'FAIRNESS' TESTS ESTABLISHED BY SECTION 24 OF **THE OMBUDSMAN ACT**?

Section 24 of the Act provides the specific grounds on which complaints may be substantiated. Subsection (1) abbreviated, reads:

Section 24(1) — Where . . . The Ombudsman is of the opinion:

> (a) that a decision, recommendation, act or omission . . . appears to have been:
>
> (i) **contrary to law**:
>
> (ii) **unreasonable, unjust, oppressive, improperly discriminatory** or was in accordance with a rule of law, a provision of an act, or a practise that is or may be unreasonable, unjust, oppressive or improperly discriminatory:

> (iii) based . . . on a **mistake of fact or law**; or
>
> (iv) **wrong**;
>
> (b) a power or right has been exercised:
>
> (i) **for an improper purpose**;
>
> (ii) **on an irrelevant ground**; or
>
> (iii) **on the taking into account of** the irrelevant considerations or;
>
> (c) **that reasons should have been given for** a decision
>
> . . .
>
> the Ombudsman shall report his opinion and his reasons therefore to the appropriate minister and to the department or agency of the government concerned and may make such recommendations as he thinks fit.

It will be noted that the subsection identifies a mix of legal and extra-legal grounds for substantiating complaints. The subsection also contains a mix of grounds which can be defined precisely and those which can only be subjectively interpreted by the Ombudsman.

TEST #1 — WAS THE ACT, DECISION OR RECOMMENDATION 'LAWFUL' IN THE STRICT LEGAL SENSE AND PROPERLY AUTHORIZED BY LEGISLATION AND REGULATIONS?

COMMENT: I look upon this as a two-fold test, to determine whether or not there was express legal authority for the action or decision complained of, and whether or not it was legally correct. In the course of a year examples abound of inadvertent illegality, where acts, decisions and recommendations exceed the scope and intent of governing statutes and regulations or were otherwise unlawful. These examples range from a legal error by the Rentalsman in reaching a decision to a Northern Municipal Council bylaw which unlawfully imposed a discriminatory tax on several hundred temporary residents in a northern community. These cases are perhaps the easy ones, even if one assumes that any two lawyers may give different legal opinions on the same subject. While an Ombudsman without legal training will soon find it essential to avail himself of good legal advice, I have less difficulty in this area because of my own background and because I have a full-time legal position on my staff.

TEST #2 — WAS THE DECISION, ACT OR RECOMMENDATION ARRIVED AT IN A 'PROCEDURALLY' FAIR WAY?

COMMENT: Over the years, the courts have developed a series of 'rights' and 'qualified rights' on which persons affected by the decisions of government tribunals are entitled to rely. In the provinces of Alberta and Ontario, general legislation has been enacted to provide minimum procedural safeguards for the citizen with regard to a range of government decisions considerably broader than tribunal decisions. In the absence of this legislation in Saskatchewan, I attempt to apply the court developed rights regarding procedural fairness in the same broad way as is required by the statute law in Ontario and Alberta, i.e. — I do not limit the procedural fairness test to the decisions of government tribunals. For example, the absence of procedural fairness was the thrust of the Special Report prepared in 1982 involving the previous method by which agricultural lands were allocated to individuals by government.

Accordingly, I am applying procedural fairness tests to most of the government decisions that we investigate and until these citizen safeguards are recognized in provincial legislation, I will continue to deal with these issues on a case-by-case basis and continue to make recommendations for system changes on a tribunal-by-tribunal or agency-by-agency basis.

If our investigation discloses only that the procedural fairness tests have not been met, then I will usually be merely recommending that the matter be reconsidered and that the system be changed to recognize these rights in the future. On the other hand, if our investigation discloses that in addition to being procedurally unfair, the decision was contrary to law, unreasonable, oppressive or based on one of the other grounds contained in section 24, then I will be recommending that the decision **and** the system be changed.

The rights and qualified rights involved in this test are:

1. ABSOLUTE PROCEDURAL RIGHTS:

(i) THE RIGHT TO A FULL AND COMPLETE NOTICE OF ADMINISTRATIVE DECISIONS.

There is a positive onus upon persons exercising powers of decision that affect others. They **must** take steps to ensure that the person affected by the decision knows the issue and when and where they are able to present their case. Unless citizens receive a notice that satisfies this onus, they literally have not had an opportunity to be heard, e.g. — notice to individuals where there is a possibility that their driving privileges may be withdrawn.

(ii) A RIGHT TO SEE ALL INFORMATION AVAILABLE TO THE DECISION-MAKER.

The general rule is that persons whose interests will be affected by administrative decisions have a right to be made aware of and to see the evidence available to the person ultimately making the decision. A corollary of this rule is that the decision cannot be based on information obtained before or after a hearing unless all individuals affected by the decision receive such information and are allowed an opportunity to respond, e.g. — a current issue involving the question of a claimant's access to his or her Workers' Compensation Board files.

(iii) THE RIGHT TO BE HEARD.

This does not mean that an oral hearing must be held in every case, as written submissions may be appropriate in a number of circumstances. It does mean, however, that a person who may be affected by a decision has the right to be heard in one form or another **before** the final decision is made.

(iv) A RIGHT TO REBUT OPPOSING EVIDENCE AND TO CORRECT OR CONTRADICT PREJUDICIAL STATEMENTS.

This does not mean that every person who may be adversely affected by an administrative decision has a right of cross-examination, but it does mean that such person is entitled to know the information before the decision-maker and must be provided an opportunity to rebut or qualify harmful information, e.g. — the process in the allocation of crown agricultural lands whereby applicants for the lands are heard separately and are not informed as to the evidence that others present. This was the source of a major objection by me with regard to the former process and is the one procedural fairness recommendation that was not rectified when the government established the new appeal process in 1983.

(v) THE RIGHT TO AN IMPARTIAL DECISION-MAKER.

In order that a person may have a fair hearing, it is essential that the individual making the decision be without a reasonable apprehension to bias. This rule is one of the most fundamental tests of procedural fairness and, as interpreted by the courts, one of the least flexible. If a member of a tribunal has an interest in the subject matter, or there is a reasonable apprehension of bias, he is disqualified from making a decision and even if he attempts to do so, the decision is legally unauthorized.

(vi) THE RIGHT TO REASONS FOR DECISIONS.

This is one of the procedural fairness tests that has some understanding and recognition in Saskatchewan. Reasons in writing are expressly required by the legislation governing a considerable number of government decisions and section 24 of **The Ombudsman Act** specifically alludes to the absence of reasons as a ground for my making a decision in favour of a complainant. However, we regularly encounter decisions where reasons have not been provided or where the reasons provided are not the real basis for the decision. We have even encountered situations where the legislation has required the giving of reasons and the agency has developed a form letter indicating that the reasons are so complex that citizens should merely accept their conclusions.

2. QUALIFIED PROCEDURAL RIGHTS:

(i) A right to cross-examination will exist in certain circumstances.

(ii) A right to counsel will exist in certain circumstances.

(iii) A right to an open and public hearing will exist in certain circumstances.

TEST #3 — WAS THE DECISION, ACT OR RECOMMENDATION IN ACCORDANCE WITH THE OTHER 'FAIRNESS' TESTS ESTABLISHED BY SECTION 24 OF *THE OMBUDSMAN ACT* ?

COMMENT: While certain grounds for decision, such as "contrary to law" and "mistake of fact or law", are legal grounds for Ombudsman decisions and recommendations and are dealt with under the first test, much of section 24 deals with grounds that are based upon more general concepts of fairness.

In reviewing investigative findings I must therefore consider whether the decision or action complained of was "unreasonable", "unjust", "oppressive", "improperly discriminatory" or "wrong", or whether the decision was made "for an improper purpose" or "on irrelevant grounds". The exercise of this responsibility and the recommendations which may flow therefrom constitute the most difficult area of my work and it is certainly the most confusing to the public service because of its extra-legal character. It is also an aspect of Ombudsman decision-making which involves a significant number of cases each year and cannot therefore be treated too cautiously if the Ombudsman is serious in endeavouring to fulfill his statutory obligations. While most of the aforementioned grounds do have their roots in legal principles and analogies, the courts have generally proved reluctant to apply these principles to most government decisions. Unlike the courts, an Ombudsman has no choice but to consider these grounds. Section 24 allows, indeed requires, that the Ombudsman give consideration to these subjective grounds and the very reason for this (the citizen's lack of a judicial remedy) can create no little confusion in the public servant's mind when legal guidance is sought and the issues are approached from a strictly legal perspective. In such cases, bureaucrats should give as much, if not more, weight to their small 'p' political instincts as to their legal advice. For obvious reasons, ministers are inclined to be more sensitive in this area than their deputies or permanent heads.

Some confusion, or at least uncertainty about the terms used in section 24 is understandable, but while this is readily dispelled on a case-by-case basis, it is a far more difficult task to reduce confusion 'across the board' and to provide the public service at large with a clear view of our expectations. This was a major consideration in devoting a portion of this annual report to the subject and is my reason for now explaining the interpretation I place on some of the major subjective grounds in section 24.

UNREASONABLE:

Many of the decisions I make in favour of the public are based on the "reasonableness" tests that I apply. There may even be a tendency to over-use this ground as it has a gentler connotation than some of the other grounds and raises fewer public service hackles. Predictably, a decision arrived at on the basis of "reasonableness" is primarily a subjective, rather than objective determination and an area of decision-making that is occasionally contentious. I temper the subjectivity by using the court developed test of what a reasonable man would decide in the circumstances but this really does little to turn the test into an objective one. My approach in this area may be better communicated by providing illustrations rather than words. The following are a sample of a few of the cases where I have found acts and/or decisions to be unreasonable:

— Where a farmer in southwestern Saskatchewan was denied one particular crown lease on four separate and consecutive occasions for four different reasons, with an entirely new reason given each time he successfully rebutted the previous reason given by the department.

— Where inmates were leaving the correctional centres with five or six transistor radios in their property bags because the policy was to confiscate radios when inmates failed to use ear jacks forcing them to purchase new radios after their radio privileges were restored, rather than returning the original radios to them.

— Where, in the course of several years of payments for repairs to a home that had been destroyed by fire, S.G.I. would have paid out more money than would have been the case if the building of an entirely new home had been authorized immediately after the fire.

— Where the Department of Northern Saskatchewan denied an economic development loan to a northern farming co-operative to purchase cattle to be grazed on a D.N.S. farm, but purchased the cattle itself and made a substantial departmental profit by grazing the cattle on the same lands.

— Where a family in the spring of 1982, was approved by Saskatchewan Housing Corporation under the Rural Housing Program for the construction of a new home on the site of their previous home upon the condition that their former home be demolished to prepare the site for the new home and where the Rural Housing Program was under review and frozen, leaving this family in a shack without either heat or water as winter approached. (See page 80)

UNJUST:

This involves acts and decisions by government where the benefits or the burdens of the decision are not applied equally to all the persons within the class of persons affected by the program, law, rule, policy etc., i.e. — where some, for reasons unrelated to the scope of the program, benefit or suffer, to a greater degree than others.

e.g. — an issue currently outstanding involving the social assistance entitlement of youths in the 16-18 year old age group and in particular, single females in this category.

A second category of injustice under this heading does not relate to the **application** of a program, law, rule or policy, but to the intrinsic unfairness of **the** program, law, rule or policy. In the latter category, I will invariably recommend a reconsideration of the law etc., itself, because it is unjust in intent.

e.g. — former distinctions between the widows of civil service pensioners who remarry and those who don't and current pension benefit distinctions between 'legal' widows and the surviving 'spouses' of long-term common-law relationships.

OPPRESSIVE:

Because of the connotations that this term evokes in the minds of public servants, I tend not to 'over-use' this ground as a stated reason for my decisions. However, apart from connotations, there is a need for this ground and a number of decisions have been reached on the basis that government acts, decisions and conduct were oppressive.

This ground is available when a system imposes unreasonable preconditions to some entitlement and, in effect, bullies a citizen or unnecessarily puts him 'through the hoops' for reasons that bear only a remote relationship to the benefit he or she is seeking. While there are exceptions, these kinds of unreasonable demands tend to arise most frequently where the member of the public is economically or otherwise dependent upon the system from which he seeks the benefit. e.g. — social assistance, corrections, workers' compensation, etc. In such cases, members of the public are essentially captives of the particular system and this knowledge can occasionally bring out the 'deity' tendencies in the administrator of these programs.

e.g. — a social assistance recipient who was being required to live in Swift Current rather than a smaller community near that city because of incorrect assumptions as to her ability to obtain employment and arrange child care in the community of her choice.

IMPROPERLY DISCRIMINATORY:

Discrimination is not reprehensible *per se*. Indeed, government legislation and programs are often directed to certain segments of society and not of universal application, e.g. — SAIL Program, Mortgage Interest Reduction Plan, Senior Citizen Home Repair Grants, etc. These are discriminatory laws and programs, but **not** improper. Discrimination only becomes unacceptable or improper when the distinctions are not necessary to meet the overall purpose or objective of the law, policy, program or act under consideration.

e.g. — I found that the limitation of D.N.S. Economic Development Loans to a peculiar definition of 'northerners' was not 'improperly discriminatory'. On the other hand, these loans could have been improperly discriminatory if this loan program had been established for northerners **and** southerners and the only loans being granted were to persons residing in the Northern Administration District.

IMPROPER PURPOSE — IRRELEVANT GROUNDS:

These grounds come into play most often where an official has demonstrated favouritism or animosity towards a member of the public affected by the decision, or where a decision has been made on grounds that are not germane to the decision, etc. This is an area of some subtlety and where admissions are rare. Fortunately, we have encountered few cases in this category, but it is something that every Ombudsman must be alert to detect and it would be naive to suggest it never happens in Saskatchewan. It is fair to say, however, that not all such cases demonstrate a deliberate intent to harm the citizen. Ignorance of the basic principles of administrative fairness is more usually the root of the problem, although this is obviously no consolation to the affected person.

e.g. — an agricultural lands allocation hearing decision by the former Lands Allocation Appeal Board where most of our client's scarce appeal time before the Board was devoted to an incorrect (and irrelevant) assessment of his drinking problem and his need for Alcoholics Anonymous, rather than his need for the lands that were the subject of the appeal board's deliberations.

WRONG:

In my view, this heading is primarily directed at decisions, recommendations and acts that are 'in error' for all and/or any kinds of reasons. While the term in its broadest context can go so far as to include across-the-counter rudeness and public servant insensitivity to the need of the public to be treated with ordinary courtesy and respect, I tend to concentrate my findings in this area to situations where the decision is a 'bad one' on the merits and sufficiently illogical as to be characterized as 'wrong' and requiring either a full reconsideration and/or a changed decision.

SOME PRACTICAL TIPS FOR BUREAUCRATS – HOW *NOT* TO RESPOND TO OMBUDSMAN RECOMMENDATIONS.

My background has provided me with considerable insight into the devices, conscious and otherwise, developed by public servants to cope with stress and criticism from the 'outside'. In this respect, an Ombudsman making findings against the bureaucracy is a stress factor like any other and is regularly exposed to the same kinds of bureaucratic devices. Senior government officials are not doing themselves a favour if they employ these devices when responding to my recommendations.

While the following list is not exhaustive, it does illustrate some of the more common, and least helpful, kinds of responses that I regularly receive from some government officials.

1. *TO MERELY ACKNOWLEDGE AND DO NOTHING MORE ON THE POSSIBILITY THAT THE ISSUE WILL DISAPPEAR WITH THE PASSAGE OF TIME OR THAT THE OMBUDSMAN WILL NOT TAKE THE NEXT STEP IN HIS PROCESS AND PROVIDE A MINISTER WITH A FORMAL REPORT AND RECOMMENDATION.*

COMMENT: It won't work!

2. *TO ASSUME (OR HOPE) THAT THE ISSUE IS EXCLUSIVELY A LEGAL ONE AND BUY TIME SEEKING LEGAL ADVICE ON NON-LEGAL ISSUES.*

COMMENT: This won't work either, but if the bureaucrat's intention is to delay, his chances are better using this technique than applying technique #1.

3. *PROVIDING A MINIMAL, AND GENERALLY UNHELPFUL, RESPONSE TO THE ISSUES WHILE SUPPLEMENTING THE RESPONSE WITH COLORFUL AND IRRELEVANT OBSERVATIONS ABOUT OUR CLIENTS AND THEIR MORALS, LIFESTYLE AND OTHER PERSONAL HABITS.*

COMMENT: I treat this kind of response as the bureaucratic equivalent of a declaration of war.

4. *A RESPONSE THAT IS PREOCCUPIED WITH THE PROPOSED RECOMMENDATION BUT IGNORES THE FACTS, LAW AND FINDINGS THAT RESOLVED THE ISSUE IN OUR COMPLAINANT'S FAVOUR. THIS KIND OF RESPONSE USUALLY CONCENTRATES ON WHY THE RECOMMENDATION IS IMPOSSIBLE TO IMPLEMENT FOR ONE OR OTHER OF SEVERAL REASONS:*

   a) *That a precedent would be created that would single-handedly destroy the integrity of the program or policy;*

   b) *That the staff and other resources are not available to implement the recommendation;*

   c) *That the legislative or fiscal authority to implement a monetary recommendation is not available; or*

   d) *That we have identified a system problem that has just gone (or is about to go) for internal study or policy clarification, to the minister or to an outside taskforce.*

COMMENT: These practical difficulties have nothing to do with the appropriateness of our factual determinations or the merit of our recommendation. These are problems for the bureaucracy and not for the Ombudsman, as government always has the ultimate authority to render lawful any recommendation an Ombudsman might make. On the other hand, the public service may be doing itself a disservice by concentrating on the practical problems associated with the implementation of the recommendation instead of putting forward its version of the factual situation. Its version could include information that we were unaware of that might change our tentative conclusions and proposed recommendations.

5. *A RESPONSE THAT ACCEPTS OUR CONCLUSIONS BUT PRODUCES MORE PAPER THAN TANGIBLE PRODUCT. THIS KIND OF RESPONSE OFTEN TAKES THE FORM OF MORE INTERNAL DIRECTIVES, WRITTEN POLICY CLARIFICATIONS, ETC., THAN THEIR STAFF CAN ABSORB AND APPLY EVEN IF THEY DO RECEIVE IT.*

COMMENT: I seek tangible changes and improvements in service, not more read or unread paper.

6. *ACCEPT THOSE PARTS OF THE OMBUDSMAN'S RECOMMENDATIONS THAT ARE BEST FOR GOVERNMENT IN THAT THEY PREVENT REOCCURRENCES OF THE PROBLEM, WHILE AT THE SAME TIME PROVIDING NO SPECIFIC RELIEF FOR THE INDIVIDUALS WHO ONLY CAME TO THE OMBUDSMAN BECAUSE THEY SUFFERED UNNECESSARILY UNDER THE UNREFORMED SYSTEM.*

COMMENT: This kind of response makes the public service the exclusive beneficiary of the benefits of the Ombudsman's work and relegates complainants with serious problems to the category of cannon fodder for government system improvements. This is a totally unacceptable response given my statutory duties to the members of the public who bring their problems to my office.

7. *A RESPONSE THAT CONCENTRATES ALMOST EXCLUSIVELY ON ONE OF THE SEVERAL REASONS FOR MY CONCLUSIONS (INVARIABLY THE WEAKEST) AND ATTEMPTS TO DEMOLISH THAT REASON BY ADDITIONAL FACTS, LEGAL OPINIONS, ETC., WHILE ENTIRELY IGNORING THE MORE COMPELLING REASONS FOR THE DECISION.*

COMMENT: A good try and infinitely more helpful than most of the above techniques.

SUMMARY OF SUGGESTIONS:

1. Deputies and permanent heads should ensure that they and key members of their staff are familiar with section 24 of **The Ombudsman Act**.

2. Departments and agencies should attempt to head-off problems in their dealings with the public by being as aware as the Ombudsman's office, of the need to ensure that their decisions are lawful, are made in a procedurally fair way and are not arbitrary. In other words, they should seriously consider adopting the same level and kind of concern that the legislature felt was appropriate when it enacted **The Ombudsman Act**.

3. Prior to classifying a complaint as substantiated and formally proposing a remedy at the ministerial level, I invariably provide departments and agencies with my tentative conclusions and contemplated recommendations. This permits a department or agency to respond or react to my conclusions, and to accept or rebut my arguments. Candor on the part of public servants in their responses is essential to the exercise, and while this is present in some departments and agencies, it is not universal. Any resort to the 'traditional' bureaucratic techniques developed for coping with complaints received directly from the public, M.L.A.'s and others, is to be discouraged. Mutual respect between the public service and the Ombudsman is essential if we are to be successful in our common effort to intelligently resolve problems between the public and **its** public service.

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PART IV

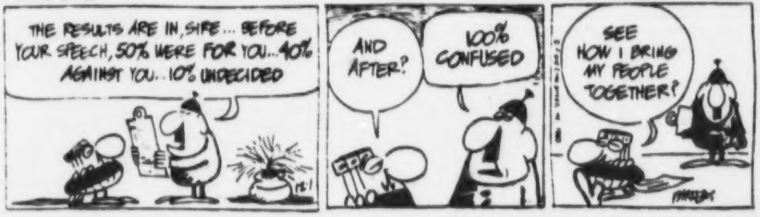
"WHO 'RATES' THE PUBLIC SERVICE?

> . . . on this occasion, the short answer is that the staff of the Ombudsman and the Ombudsman, are prepared to do so."

Annual Report of the Ombudsman, 1981.

Our rating system was continued in the 1982 Annual Report and will be included in this report as well. While our contact with the public is rarely prompted by a citizen's good feeling about his government, our collective contacts and case experience are significant in any given year. The information we receive enables us to identify 'soft-spots' in programs and policies. It also leaves us with some clear collective impressions of the quality of the services being provided to the public by specific departments and agencies.

WIZARD OF ID By Brant Parker and Johnny Hart


THE RESULTS ARE IN, SIRE... BEFORE YOUR SPEECH, 50% WERE FOR YOU...40% AGAINST YOU...10% UNDECIDED
AND AFTER?
100% CONFUSED
SEE HOW I BRING MY PEOPLE TOGETHER?
PARKER

By Permission of Johnny Hart and
News Group Chicago, Inc.

"**BALLOT**

The purpose of this ballot is to rate the quality of the service to the Saskatchewan public by its public service. Service to the (occasionally-suffering) Saskatchewan public by a department or agency may range from a rating of one-star for less than minimum service to a five-star rating for exceptional service.

★	Less than minimum service
★★	Minimum service
★★★	Average service
★★★★	Very good service
★★★★★	Excellent service
To be rated	This department or agency cannot be rated yet as our case experience is too limited.
Provisional	This department or agency is approved at a given level on condition that deficiencies will be remedied within a specific period of time or in recognition of the fact that it is in the course of re-organization."

	1982	1983
ADVANCED EDUCATION & MANPOWER	★★★½	★★★★
AGRICULTURE		
— General	★★★½	★★★★
— Lands Branch	★★★	★★★
— Saskatchewan Crop Insurance Board	★★★½	★★★½

CONSUMER AND COMMERCIAL AFFAIRS		
– General	★★★	★★★½
– Rentalsman	★★★	★★½
EDUCATION	★★★	★★★★
ENVIRONMENT	★★★	★★★
HEALTH		
– General	★★★★	★★★★
– Saskatchewan Hospital Services Plan	★★★½	★★★★
– Saskatchewan Medical Care Insurance Commission	★★★½	★★★½
HIGHWAYS AND TRANSPORTATION		
– General	★★★½	★★★★
– Highway Traffic Board	★★★★	★★★★
JUSTICE		
– General	★★★½	★★★
– Corrections Branch	★★½	★★★½
– Criminal Injuries Compensation Board	★★★	★★★½
– Saskatchewan Police Commission	★★★½	★★★½

LABOUR	★★½	★★
NORTHERN SASKATCHEWAN	★★	★★½
PARKS AND RENEWABLE RESOURCES	★★★½	★★★
PUBLIC SERVICE COMMISSION	★★★½	★★★½
PUBLIC SERVICE SUPERANNUATION BOARD	★★★★	★★★★
REVENUE AND FINANCIAL SERVICES	★★★	★★★½
RURAL DEVELOPMENT	★★★½	★★★½
SASKATCHEWAN GOVERNMENT INSURANCE		
— General	★★★½	★★★½
— Claims	★★★	★★★
— Motor Licensing Division	★★★½	★★★½
SASK. HOUSING CORPORATION	★★	★★½
SASK. POWER CORPORATION	★★★½	★★★★

SASKATCHEWAN TELECOMMUNICATIONS	★★★½	★★★★
SOCIAL SERVICES		
— General	★★★	★★★
— Community and Personal Services Division		★★½
— Regional Services Division		★★½
URBAN AFFAIRS	★★★½	★★★½
WORKERS' COMPENSATION BOARD	★★½	★★★½

CASE SUMMARIES

DEPARTMENT OF HEALTH

"A HAPPY ENDING"

#82-13000-10-10

A degenerative eye disease left our complainant blind at the early age of 32. Through recent medical advancements, a set of telescopic glasses had been developed which, although expensive, would enable our client to see again.

Our claimant went to an Eye Clinic in Pennsylvania which offered this visual aid, and was fitted with these glasses at a cost of $4,200. Upon his return to Saskatchewan, his attempts to obtain financial assistance from the provincial government were frustrated. He contacted my office for assistance.

The Saskatchewan Aids to Independent Living (SAIL) program seemed the ideal program to assist our complainant. His visual aid was imperative to his continued employment and as an added benefit, it had vastly improved his mobility and independence by enabling him to obtain a driver's license.

My office initiated an investigation with the Department of Health and its SAIL program. Visual aids of this sort were not covered under the SAIL program, however, I felt the department may want to consider adding this item. It appeared to be a beneficial "aid to independent living". This equipment enabled our complainant to carry on a reasonably normal lifestyle instead of being "legally blind".

The Minister of Health considered our suggestion, however he indicated that the visual aid would not be added to the program at this time. He did however, indicate that discussions with the C.N.I.B. respecting the equipment and services required by low vision persons would be ongoing. Even so, the minister was not prepared to authorize reimbursement to our complainant.

There was however, a happy ending to this investigation. In spite of an earlier position to the contrary, the Vocational Rehabilitation Development Branch (V.R.D.P.) of the Department of Social Services, now felt that our complainant's situation required their assistance and he was fully reimbursed for his telescopic lenses and his expenses in obtaining them.

It is my hope that the Department of Health will continue its current discussions with respect to the equipment and services required by the visually impaired and in particular, low vision persons.

DEPARTMENT OF THE ENVIRONMENT

"TOO MANY ACTORS"

It has been my experience that where the responsibility for programs and/or remedies are shared by two or more departments and agencies, the citizen is often ill-served. Relocation grants for intensive livestock operations and problems associated with municipal nuisance grounds and landfill sites are past examples in point.

A fresh example was encountered in 1982 and 1983 when we received a significant number of complaints from the owners of lands adjacent to municipal sewage lagoons who had incurred significant damage to their lands because of leaching from those lagoons. These issues involved a number of different provincial actors, but after investigation, we concluded that the Department of the Environment did not have the legislative authority needed to impose preventative measures as a condition of its approvals and re-approvals of municipal sewage lagoons. These complaints also highlighted other very practical problems for persons with damage claims related to sewage lagoons.

If a person incurs damages because of a sewage lagoon, it is necessary for him to lodge a complaint with the appeal board functioning under the aegis of the Saskatchewan Assessment Commission before he can initiate court action. This appeal board currently imposes an onus on the landowner to prove his damage even though the legislation establishing the appeal board imposes a duty upon this tribunal to independently investigate. At the same time, the Department of Agriculture has some involvement in the location of new lagoons and the Department of Health has an ongoing responsibility with regard to certain aspects of lagoon operations. Combine these provincial interests with some conflicting interests on the part of the adjacent landowner, local municipalities and the government departments responsible for these municipalities, and it is scarcely surprising that we have a system which simply doesn't work.

Notice of my tentative conclusions and recommendations have been communicated to the departments and agencies over which I have jurisdiction and formal Reports and Recommendations will be forwarded to several ministers early in the new year.

WIZARD OF ID
By Brant Parker and Johnny Hart
HOW DO YOU DISPOSE OF YOUR TOXIC WASTES?
I MAIL THEM TO A FALSE ADDRESS
WHAT HAPPENS TO THEM AFTER THAT?
THAT'S THE POSTMASTER'S PROBLEM

By Permission of Johnny Hart and News Group Chicago. Inc

DEPARTMENT OF LABOUR

"THE PUBLIC'S RIGHT TO KNOW"

#82-16000-10-08

In August of 1982 a problem was brought to my attention concerning a house fire in a rural community in Saskatchewan. The fire had occurred a year earlier and had resulted in the death of a four-year old child and extensive damage to the home. While some difficulties had been encountered with Saskatchewan Government Insurance in settling the insurance claim, this was no longer an issue. However, the family expressed concern about a lack of action by the Department of Labour following its inspections of the fire damaged home. It should be noted that this family had only been living in their new home for approximately four months at the time of the fire.

Indications were that the fire had started in a light fixture which was recessed in a molded bathtub unit. This family was concerned that had the light been properly installed and inspected, there should not have been a fire in a new house. They also expressed concern that following the investigation by the Department of Labour, there did not appear to be any concrete action taken by the department with respect to any particular contractor. I therefore opened an investigation to assess the actions taken by the Department of Labour.

My initial investigation focused on the actions of the Department of Labour with respect to investigation of this fire. The local fire inspector had attended at the scene the day after the fire and the investigation occurred in the days immediately following the fire.

Statements had been taken from the various contractors who had been involved in the construction of the home, particularly with respect to the installation of the bathtub and the light fixture.

Additionally, the light fixture in question had been removed and inspected by the Department of Labour. The manner in which it had been installed was compared with other fixtures in the home. The Canadian Standards Association was also asked to test this particular light fixture and wiring.

The Department of Labour was able to determine that a number of factors had contributed to this particular fire. At the same time, no single factor could be singled out as the sole cause of the fire. For this reason, the department felt that it was impossible to attribute blame for this fire to any one factor or individual.

In view of the department's conclusions, it provided advice to electricians and fire inspectors as to the type of precautions which should be taken in order to prevent similar situations from arising in the future. The Chief Electrical Inspector published a bulletin on November 27, 1981 making reference to recessed fixtures in insulated ceilings. The bulletin noted that the fixture must be enclosed in a boxed space of specific dimensions. Gypsum board or plywood was to be used and a suitable vapor barrier was also required between insulation and the enclosure. In this manner, insulation above the light fixture would be prevented from coming into contact with the fixture itself. Additionally, the bulletin made specific reference as to the type of light fixtures which were considered appropriate as well as the wiring which was required. All of this was directed towards ensuring that insulation did not fall upon the fixture and cause the fixture and/or wiring to overheat.

The fire inspector also included a two-page report on "Fires in Plastic Bathing Enclosures" in a newsletter to the fire departments in the province.

My investigation of this matter did not reveal any significant new information. To some extent, I was required to rely upon technical and expert opinion obtained by the department during the course of their investigation. Similarly, I also did not believe that any one individual or factor could be held to be totally responsible for this fire.

The only significant difference between the department's findings and my own was that I believed that the public needed to be made more aware of this risk. If this occurred, anyone having a recessed light fixture installed in a molded bathtub could have the unit checked to ensure its safety. I advised the Department of Labour of my findings and recommendations on March 1, 1983. The department expressed its willingness to comply with my request for information to be provided to the public. However, considerable time elapsed before this occurred.

I was pleased to note that the December 1983 issue of the Consumer Times included an article on this problem. To the extent that citizens read this publication and/or my annual report, they will be somewhat more aware of potential problems with recessed light fixtures in molded bathing enclosures. Thus, while it is most unfortunate that I was unable to be of any practical assistance to this family, I am satisfied that appropriate actions have now been taken to ensure that similar situations are *less* likely to occur in the future.

The article in the Consumer Times reads as follows:

> "CHECK RECESSED LIGHTING FIXTURES
>
> Saskatchewan Labour reports that there are possible fire hazards involving lighting fixtures recessed into ceiling spaces having thermal insulation and fixtures recessed into the top of molded bath tub units. There have been several fires investigated, one of which involved a fatality, to determine if they were of electrical origin.
>
> A three year old lost his life in a fire which apparently originated in the ceiling space above the bathroom of his home. Investigation revealed that there was no ceiling drywall above the tub enclosure and the insulation was supported only by a plastic vapour barrier stapled to the joists. It is believed that thermal insulation dropped or settled onto the lighting fixture recessed into the top of the tub enclosure, causing a failure of the wiring from overheating. The fire in the attic space above the tub was not detected until some 5 hours after the circuit breaker had tripped, suggesting that considerable smouldering of the cellulose fibre insulation had occurred.
>
> Tests indicate that recessed lighting fixtures covered with thermal insulation will suffer severe overheating and failure of the conductor insulation, with ignition of adjacent combustible material likely to result. It is therefore very important that lighting fixtures recessed into insulated ceiling spaces never be covered by insulation blown into attic spaces. This

is done by boxing in the fixture with drywall or plywood, allowing sufficient volume to dissipate the heat. Removing a recessed light fixture completely is the safest solution.

Saskatchewan's Chief Electrical Inspector suggests that anyone having a molded fibre reinforced epoxy bathtub with a lighting fixture recessed into the top of it take steps to have it examined. Upon removal of the fixture, the location, support and condition of the insulation should be noted. Corrosion of internal parts of the fixture will be an indication of a poor vapour seal and corrective action will be required. The services of an electrical contractor should be obtained.

For further information, contact the Electrical and Elevator Safety Unit, Department of Labour, 1150 Rose Street, Regina S4P 3V7. Phone 565-4527."

DEPARTMENT OF REVENUE AND FINANCIAL SERVICES

"TWO EXAMPLES OF SENSITIVITY TO CITIZEN PROBLEMS"

1. #82-11000-10-01

In March of 1982, I received a complaint from an individual concerning his application under the Saskatchewan Capital Gains Tax Rebate Program for the tax year 1980. This person was dissatisfied with the department's decision that he did not qualify for the program.

Our investigation revealed that the application had been denied because the applicant did not meet the definition of 'active farmer' contained in the Capital Gains Tax Rebate Regulations. The regulations defined an 'active farmer' as "an individual whose chief source of net income for any four of five consecutive years since December 31, 1971, was from farming". There was no doubt that this applicant obtained his chief source of net income from farming in the years 1972, 1974 and 1975. The only year in issue was 1973 when this applicant incurred a substantial net loss in his farming operations.

This applicant apparently failed to qualify for the Capital Gains Tax Rebate Program because he had experienced a net loss in his farming operations for one of the qualifying years. There was no question but that this applicant had been a farmer in 1973. The Department of Revenue and Financial Services had taken the position that since the farmer had no net income, "his chief source of net income" had not been from farming and he did not fall within the definition of 'active farmer' in the regulations.

While it is true that 'net income' is generally thought of as being a positive amount, that term is well recognized in the filing of tax returns where even a loss is shown as 'net income'.

I took the view that the Capital Gains Tax Rebate Program was designed to assist active farmers such as our complainant. The fact that he did not have a positive 'net income' for one year was a technical and unintended interpretation that should not preclude him from benefiting from the program. I advised the deputy minister of my intention to pursue a recommendation on behalf of this individual.

The initial response from the department was in the negative and it restated the wording of the regulations as the basis for their denial of my recommendation. Ultimately, the department did concede that the Capital Gains Tax Rebate Program was 'intended for bona fide farmers' and recognized that the definition of an 'active farmer' was unduly restrictive. The department expressed a willingness to make a change in the regulations which would avoid this kind of problem in future. I was also assured that our complainant's application would be considered after the regulations had been amended.

In May of 1983, our complainant advised that his application under the Capital Gains Tax Rebate Program had been accepted and that he had received his cheque. I was informed by the department that an order-in-council had been passed which permitted his application to be approved on exceptional grounds. I was further informed that the revised regulations would soon be complete and that any other farmers in similar circumstances could benefit from the changes.

HORRIBLE HAGAR
BY DIK BROWNE
IT'S NOT EASY BEING A TAX COLLECTOR
WHEN I COME AROUND PEOPLE TEND TO STOP TALKING AND FREEZE UP
ISN'T THAT A SHAME?
I SAID: "ISN'T THAT A SHAME?!!"

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2. #82-12000-10-01

The SEDCO Building on Winnipeg Street in Regina, had accommodated two canteens for almost 10 years. In March of 1982 a decision was made by the Department of Government Services to close one of the canteens by June 30, 1982. The fact that the Department of Social Services was to be relocating on July 1 of that year was the reason for the decision. The relocation would reduce the staff in the building and it was doubtful whether the remaining staff could support two facilities. It was odd, however, that the canteen that was to remain was the service that served Department of Social Services staff.

The operator of the canteen that was to be closed contacted my office as she felt that the decision was not a fair one. Our client was not eligible for unemployment insurance benefits as she was self-employed and as premiums had not been paid on her behalf. The decision seemed even more unreasonable when my investigator learned that the Department of Social Services had not vacated the premises as planned on July 1, 1982. As of February 1983, the space, once occupied by our client, remained empty and the tables and chairs remained where they had been on the 30th of June of the previous year. Additionally, the move of Social Services personnel had also not yet occurred. It is my understanding that there was no significant movement of Social Services staff from this location until late in 1983.

Our client was able to obtain alternate employment towards the end of August 1982 and as I felt the department's decision was premature and had caused her unnecessary hardship and a premature loss of income, I recommended that the Department of Government Services pay two months in lost profits. The department, although not legally obligated to pay severance or compensation, agreed in April of 1983 to pay the amount I had recommended.

DEPARTMENT OF HIGHWAYS AND TRANSPORTATION

"A TRAFFIC SAFETY ISSUE"

#81-14000-10-03

In the summer of 1981, I was contacted by an individual with respect to an approach road which had been constructed on his property. This man owned property on which he operated a motel and had leased a restaurant to a second party. According to the complainant, the individual leasing the restaurant had been granted approval by the Department of Highways for construction of this approach road. The complainant was opposed to the construction of the approach road and could not understand how approval for this construction could be given to anyone, except himself.

Investigation of this complaint revealed a long-standing dispute involving the lessee of the restaurant, the complainant and the Department of Highways. Construction of an approach road to the restaurant had been consistently refused by the Department of Highways over the years, for two reasons. Firstly, there was a serious concern over safety in that the approach was to a major highway. Secondly, the long-term plan in this community involved a proposal to construct a service road for the businesses in question, rather than a direct approach road. An additional complicating factor was that the planned construction of the service road would require the dedication of some property by the affected land owners. As well, there were also some extra costs associated with relocating certain property and equipment, associated with the construction of a service road.

The investigation also indicated that the lessee of the restaurant had attempted to have the restaurant property subdivided from the balance of the property owned by our complainant. The complainant would not agree to this subdivision as he had numerous outstanding disputes with the lessee. These disputes had resulted in court action being commenced by our complainant against the lessee, seeking a termination of the lease.

Simultaneously, the lessee of the restaurant was attempting to exercise an option to purchase the property on which the restaurant was situated. This matter was also before the courts by the time the complainant approached my office.

The factor which had brought this problem to a head was the issuance of an approach permit by the Department of Highways to the lessee of the restaurant. This permit was issued on the condition that certain property would be dedicated to the Department of Highways throughout the length of the parcel of land on which the restaurant was situated. However, the lessee did not own the property and was not at that time, in a position to dedicate the property. Furthermore, as the planned subdivision had never been approved, all of the property remained registered in the name of our complainant and not to the lessee.

It was my view that the issuance of this approach permit by the Department of Highways was most inappropriate. I therefore informed the Department of Highways of my findings and recommended that the approach permit be revoked and that the approach be removed.

The response which I received from the Department of Highways centred on the intended subdivision of this particular property. The department indicated that they were of the opinion that the subdivision of these lands had been imminent at the time that the approach permit was issued. The department agreed however, that the subdivision had not occurred and therefore the lessee of the restaurant had been unable to fulfill the condition requiring dedication of certain property. The department confirmed that the lessee of the restaurant had "no legitimate right to retain the approach". At the same time, the department cautioned that "elimination of the approach might resurrect long-standing feuds which could result in the failure of the restaurant and a strong local reaction to the removal of the approach".

In fact, my office did receive a number of representations from town officials and other interested parties. There was obvious concern about the possible detrimental effects on the community if the approach road was removed. At the same time, optimism was expressed that the court action between our complainant and the lessee could eventually resolve this issue. As court action was being actively pursued, I decided to monitor the court results before proceeding further with my recommendation.

In the fall of 1982, the complainant informed me that he had abandoned his court case against the lessee of the restaurant. His solicitor had suggested that court costs would be excessive and that the likelihood of winning the court action against the lessee of the restaurant was not good. Therefore, rather than expend additional monies, the complainant agreed to sell the property in question to the lessee of the restaurant. The complainant did this with much reservation but felt he had little alternative in view of his already impressive legal costs.

As soon as the lessee of the restaurant was able to purchase the property on which the restaurant was situated, he could then fulfill the conditions under which the approach permit had originally been issued by the department. Therefore, my recommendation concerning the rescinding of the approach permit and removal of the approach road was no longer meaningful. At the same time, my finding that the approach permit never should have been issued because it posed a highway safety problem, was still a valid criticism of the department's decision to issue the approach permit.

Accordingly, no recommendations were made and this file was concluded on the basis of my finding that the department had erred in issuing the permit in spite of the obvious traffic safety problems associated with the approach.

SASKATCHEWAN GOVERNMENT INSURANCE

"THE MONSOON SEASON"

#83-26000-30-91

As a result of a severe storm that passed through Regina on July 9, 1983, a great number of home owners found their basements flooded resulting in considerable damage to developed areas such as rumpus or family rooms, bedrooms, bathrooms, etc., and loss of personal, and often irreplaceable belongings. Saskatchewan Government Insurance was literally inundated with claims and as adjusters completed preliminary assessments of damages and losses, owners became aware of differences between "seepage" and "sewer back-up". Unlike most insurance policies offered by the industry, S.G.I.'s Home-Pak policies do cover loss caused by a sewer backing up, however, the following is quoted from S.G.I.'s Easy Read Home Policy Booklet with respect to "seepage":

> "Water Above or Below the Surface of the Ground.
>
> We will not pay for loss caused by flood, waves, or water spray. Damage due to ice or floating objects is also not covered.
>
> We will not pay for loss caused by water below the surface of the ground which puts pressure on or seeps through your sidewalk, driveway, foundation, or basement; or which comes into your house through any opening. Damage caused by a broken watermain is covered.
>
> If you have Code "B" or "C" coverage, you are covered for damage from sewer back-up.
>
> If you have Code "C" coverage on your belongings, your belongings are covered for all of these losses."

Our case involved that very issue.

Our complainants had coverage on their home under a Code "C" Home-Pak III policy that insures against "all risks". The basement of this home was fully developed into a large comparatively elegant family/rumpus room, separate bedroom, utility room and large bathroom. It had been subjected to about two inches of fluid during the storm causing loss or damage to many personal belongings, the rugs and underlay. As the four-inch walls contained R-12 fibreglass insulation sheeted over with gyproc under the wood finish, considerable damage was also sustained by the walls as the insulation soaked up the liquid like a sponge.

It is appreciated that adjusters were carrying a heavy workload and putting in long hours in an effort to adjust the hundreds of claims received. Many were unable to recall visiting specific homes and it was necessary to rely on notes taken at the time of the visit with respect to statements of the owners and the adjuster's visual inspection. Although there had been an adjuster who attended at our complainant's home, six days after the storm to take photographs and do a preliminary assessment, the follow-up was conducted two weeks later by another local adjuster. It was his assessment that water had come into the basement around the perimeter of the walls, and the sump hole. Although S.G.I. accepted liability for damage and loss to the rugs, underlay and personal belongings, it would not accept liability for the damage to the walls because it was due to "seepage" which was excluded under the policy.

This couple was adamant that the fluid in their basement was due to sewer back-up as the basement toilet had overflowed and there had been considerable sewer fluid enter the basement from the sump hole as the cap did not fit properly and it was not possible to screw it into the threaded opening of the drain pipe. They indicated that a dark substance had settled on the rugs and exposed floor and the "sewer" odor was so strong that it was almost impossible to go into the basement. They also indicated that on the Monday morning following the storm a carpet cleaning service had attended and attempted to vacuum up the fluid but had only very limited success after two attempts and the odor remained despite him using a commercial deodorant on the second try.

We interviewed this person, three other experienced servicemen from various firms and four other persons who had visited this home during the days following the storm. Additionally, my investigator spent several minutes in an unsuccessful attempt to screw the cap on the sump drain. It was the firm opinion of all those interviewed that there had been sewer back-up in the basement. Records at the Sewer Design Offices, City of Regina, revealed that there had been a six-inch domestic sewer connection made at the time of the construction dated May 28, 1975, however there had been no storm drain connection. This meant that the sump drain was connected, at some point, to the sewer system. There was no record of any blockages or complaints with respect to the connection at that address, on file.

The information gathered during my investigation was presented to the claims office involved and as a result, S.G.I. was prepared to accept liability and pay their insured.

"A VERY EXPENSIVE FIRE"

#82-26000-30-47

In April of 1982 my office received a complaint concerning the quality of repair work to a farm home authorized by S.G.I. This home was only 14 months old at the time that it was severely damaged in a fire. The fire occurred in early November 1980, however 16 months later, repairs were still not completed to the satisfaction of the insured.

My office commenced an investigation of this matter. It soon became clear that the damage to this home had been quite extensive. The firm that had constructed the home placed a replacement cost of $41,000 on the house. Alternatively, the cost for repairs was estimated at approximately $37,000. Saskatchewan Government Insurance then proceeded to obtain a second estimate from a private contractor. This estimate was for approximately $18,000. On this basis, S.G.I. awarded the contract for completion of repairs to the firm who had issued the second and much lower, estimate.

Review of the S.G.I. files confirmed that the basic repairs to the home were completed in about three months. Shortly thereafter, problems with the repair work and various deficiencies began to arise. Our complainant had hired a solicitor to assist him in securing a satisfactory settlement through S.G.I. In turn, S.G.I. had made certain requests of their contractor, to repair the necessary deficiencies. The contractor, in turn, refused to accept responsibility for deficiencies and thus a stalemate evolved.

It should be noted that while this contractor had initially estimated repair costs of $18,000 the actual repair costs were in the neighbourhood of $32,000. Our complainant and his solicitor then arranged for a new contractor to provide a further estimate of the repairs which were still needed for this home. The estimate which our complainant obtained for repairs which were still required for this home was approximately $19,000. One must remember that the estimated replacement cost for this home was only $41,000.

Negotiations continued between S.G.I., our complainant and the contractor. One complicating factor was that our complainant had made arrangements with the contractor to do some of the repair work on his own. Thus, even when it could be agreed that certain work was deficient, disputes then arose as to who was responsible for this particular work.

After concluding my investigation of this complaint, I had little difficulty in reaching the finding that Saskatchewan Government Insurance had failed to complete repairs of like kind and quality to our complainant's home within a reasonable period of time and recommended that S.G.I. immediately engage a contractor to repair the complainant's home.

The response which I received from S.G.I. outlined some of the difficulties which had been encountered during the course of this claim. S.G.I. was in agreement that the quality of the repair work completed did fall short of acceptable standards. Additionally, there was agreement that some items which needed to be repaired, were not included in the original contract. Finally, Saskatchewan Government Insurance advised that our complainant had commenced legal action through his solicitor and, in this manner, the claim was being referred to their legal department.

At this point, since the matter was before the courts, I determined that the preferred course of action would be to monitor developments and await the conclusion of the court case.

In August of 1983, my investigator was informed by the complainant that they had now received final settlement from S.G.I. The complainant received a further $12,795 as final settlement and would be required to hire his own contractor to complete the necessary repairs to this home. Although the complainant was not totally satisfied with this settlement, he had agreed to accept this amount, rather than spend more money and time in pursuing the question in the courts.

Upon receiving this information, my file was closed. I considered this complaint to be substantiated since it took Saskatchewan Government Insurance approximately 33 months to settle this particular claim. Additionally, repair costs appear to have totalled more than $44,000 for a home whose replacement cost was originally estimated at $41,000 by the firm who had built the home some 14 months before the fire. Clearly, the original decision to repair this home rather than building a new one was not a correct one.

SASKATCHEWAN HOUSING CORPORATION

"WHERE MORE THAN THE PROGRAM MIGHT HAVE BEEN FROZEN"

#82-18100-00-09

In August of 1982, I received a letter from a resident of rural Saskatchewan complaining about the delays that he was encountering in the construction of a new home for his family. He stated that he had transferred title to his property in May of 1982 to S.H.C. and dismantled his old home in June of 1982, in anticipation of the construction of the new home on the same site. The complainant's family was living in very "temporary" accommodations without central heating or water and had some very real concerns about how they could survive in these premises over the winter.

Our inquiries into this complaint revealed that an application had been made under the Rural Housing Program. The complainant stated that he had been verbally informed of his approval for the program but that following the election in April of 1982, was also informed that the entire program was under review and that a new home could not be built at that time.

The question of winter housing for this family required a timely response. I therefore contacted the Saskatchewan Housing Corporation with respect to a rental house, owned by S.H.C., situated in the same town as our complainant. This home had been recently vacated and the Corporation subsequently agreed to rent this house to our complainant on the first of November.

Our complainant was pleased with this rental arrangement. He noted that the rental house was of the same general size and plan as the one which he had intended to construct. He therefore expressed his desire to purchase this house from S.H.C.

A newspaper article in early February of 1983 had suggested that the sale of some rental properties was a priority for S.H.C. Inquiries were therefore initiated by both myself and the complainant as to the possible sale of this property.

The initial response from the Saskatchewan Housing Corporation was non-commital. The Corporation did not acknowledge any formal request for purchase of this rental property from the complainant. Similarly, they were not at that stage committed to selling this particular property.

It had been my view that the complainant's initial application for construction of a new home had been completed and agreed to by the Corporation. I therefore advised S.H.C. of my findings. I expressed the view that the Corporation had failed to fulfill both their legal and moral obligations to this complainant. As the complainant was satisfied with his rental accommodations, I proposed the sale of this home to the complainant as a reasonable resolution to the problem.

The Corporation responded by advising that the community in which this complainant resided had been placed on a priority list for "investigation of a possible housing project". S.H.C. also indicated that a local selection committee would soon be established to review all applications and that this committee would then priorize the successful applicants. In this manner, if our complainant was recommended by the local selection committee, the Corporation would be able to sell this home to our complainant. The Corporation suggested that the matter could be resolved in three weeks.

Two months later, I had still not been informed as to the final disposition of this offer. I made further inquiries of S.H.C. and a response was received within a matter of days, confirming that the sale documents for this property had already been forwarded to our complainant.

Subsequent contact with our complainant confirmed that he and his wife had received and signed an agreement for sale.

AN OMBUDSMAN'S OFFICE IS MORE THAN AN INVESTIGATIVE AGENCY — SOME EXAMPLES

There is a significant part of our work that goes unnoticed because the office only comes to the attention of the general public and the public service when we are involved in investigations, reports and recommendations, i.e. — our formal process. For the past several years, the office has been organized to attempt to solve certain kinds of problems at an early stage. The results have been encouraging.

Every year, a significant proportion of our complaints against the government involve delays and poor communications. Some of these problems can be resolved at an early stage now that skilled and active assistance is available to our complainants. For example, we were able to produce resolutions for 79 members of the public in 1983 without directing our scarce investigative skills to the task. This product, coupled with almost 1,400 'intelligent' referrals to other agencies with regard to non-jurisdictional complaints, again meant a very busy year for our two intake officers. Some examples:

#83-16030-10-91

On July 27, 1983, I received a complaint from an injured worker that the Workers' Compensation Board had not accepted responsibility for a re-occurrence of a prior work related injury. On August 2, 1983, the complaint was referred to a Claims Officer who advised that the delay had been caused by a filing error and agreed that a review would immediately be conducted by the Board's Medical Officer. On August 4, 1983, the complainant learned that his application for benefits had been accepted and his cheque was on its way.

#82-23000-20-73

On August 13, 1982, a senior citizen came to my office because she and her late husband had not received Saskatchewan Income Plan benefits for the months of May and June of 1982.

The complainant and her husband had previously lived in Alberta and received Alberta Assured Income Plan benefits during that time. In April of 1982 they moved to Saskatchewan and the Department of Social Services advised them that their Saskatchewan Income Plan benefits would not begin until July 1, 1982. It appeared to us that they should have been entitled on May 1st.

Our complainant requested that we hold her complaint in abeyance as her husband had just passed away.

In October of 1983 we contacted the Department of Social Services about the problem and the department agreed to pay benefits to our complainant and her late husband for the months in question.

#83-4000-10-02

This file involves a woman who was attempting to complete her university education and was facing the prospect of dropping out due to lack of financial support.

She was a single parent who had financed her first three years at university through federal student loans but did not qualify for the Saskatchewan Bursary in that she had started her degree program before she had been resident of this province for 12 months. Her time as a full-time student at university did not count towards establishing her residency. However, through preliminary contact with the Department of Advanced Education and Manpower it was learned that because of changes in 1983-84 residency requirements, our complainant might be eligible for a change in her residency status which would entitle her to receive a Saskatchewan Bursary. Our complainant successfully applied for a student loan and bursary for the fall/winter semester to complete her education.

The loan ensured that our complainant could attend classes for the next university year, but she was left with the problem of finding support for the duration of an intersession class which was a prerequisite to her continuing in the fall. The matter was taken up with the Department of Social Services and it was noted that the complainant would be available for employment as she was taking only one class. Given that she would not be a full-time student and recognizing the importance of this one intersession class to her continuing university in the fall, the department, as a special consideration, agreed to provide living expenses on condition that she actively sought employment while in receipt of assistance.

#A-30-83

On November 8, 1983, I received a complaint from an individual who was having trouble settling a claim with S.G.I.

Our complainant was involved in an automobile accident in May of 1981. He was not considered at fault, however, had not received the deductible portion of his insurance. He had been advised that he would receive the $350 upon settlement of the accident claim.

Our complainant had waited a year for his money and again contacted S.G.I. He was told that the claim had been settled and S.G.I. was not responsible for collecting the deductible. He contacted a solicitor who also had no success in getting his $350.

On December 5, 1983, I wrote the President of S.G.I. outlining the situation. On January 25, 1983, the president responded indicating that the non-payment of the deductible had been an oversight and that a cheque for $350 and an apology had been sent to our complainant. On January 26, 1983, our complainant confirmed that he had received the cheque and the apology.

THE PUBLIC SERVICE COMMISSION AND THE DEPARTMENT OF GOVERNMENT SERVICES

"SHOULD AN EMPLOYEE HAVE TO PAY FOR HER EMPLOYERS' MISTAKES?"

#79-24000-10-07

This complaint involved a government employee who had moved from the Wascana Centre Authority to the Department of Government Services several years ago and who had retained her seniority, holiday and other benefits from her previous employment. In the course of a general audit of holiday credits one and one-half years after her move, it was discovered that she was technically not a 'transfer' employee and the decision was made that she must lose her seniority from her former employment and pay back her benefits and holiday entitlements. As she had only accepted the new position on the basis that her past seniority would be recognized, she understandably felt aggrieved and brought her problem to us.

Our investigation confirmed that this employee was technically not a 'transfer' employee and not legally entitled to have her past seniority recognized. However, the investigation also confirmed that she had only moved to the department because her seniority *would* be recognized and that at the time of her transfer, her previous employer, her new employer and because of its silence, the Public Service Commission, had all treated her as a 'transfer' employee until the error was discovered. In the case of the Wascana Centre Authority and the Department of Government Services her status as a 'transfer' employee had been documented on their files on more than one occasion. In other words, our complainant as well as her past and present employers and the Public Service Commission, had all incorrectly assumed that her past seniority and holiday, sick-leave and other benefits from her past employment were intact and available to her in the Department of Government Services.

While our complainant was on the wrong side of the legal issue, I am entitled under **The Ombudsman Act**, to look at a considerably broader range of grounds as the basis for my decisions than just legal grounds.

The following tentative conclusions were communicated to the department and the Commission:

> "I find the conclusion irresistible that employer errors caused Ms. X to accept an offer of employment that she would not otherwise have accepted. The continuation of this

> error for almost two years worked to the serious prejudice of Ms. X as it made a job reversal impossible. Ms. X, in my view, is entitled to special treatment as she lost, through no fault of her own, vacation leave, sick-leave and other seniority benefits."

Ultimately, my recommendations were:

"1. THAT the Department of Government Services and the Public Service Commission take whatever steps are necessary in order to retroactively recognize Ms. X's past service with the Wascana Centre Authority so as to reinstate, from April 1, 1976, her vacation leave credits, sick-leave credits, seniority and any other benefits relating to her past service.

2. THAT the Public Service Commission take whatever steps may be necessary to ensure that it has a limited discretion in future to retrospectively regularize an individual's status as transfer-employee where individuals have been demonstrably misled as to their status and have lost benefits as a direct result of these misrepresentations."

My recommendations were submitted in June of 1980 and the Public Service Commission initially relied on the legalities and resisted the recommendation. The debate continued until I forwarded a formal Report and Recommendations in April of 1982 to the ministers then responsible for the Public Service Commission and the Department of Government Services.

With the change of government, my Report could not be located in at least one new minister's office and was re-submitted in July of 1982. After obtaining an agreement from the Department of Government Services that it would accept and implement my recommendation if the Public Service Commission would agree, an acceptance was obtained from the minister responsible for the Public Service Commission in September of 1982. Unfortunately, this did not immediately resolve the matter as a new actor entered the piece. Because the definition of a 'transfer' employee was also defined in the collective agreement, it was then necessary to obtain the consent of the S.G.E.U. to a letter of understanding with the Public Service Commission. Again, discussions with the union were necessary and it was February of 1983 before a remedy was finally available to this employee. By this time, the issue of her seniority had become of vital concern as her work unit was about to be abolished and the additional seniority was critical to her future job security.

Fortunately, this story also had a happy ending. This complainant is to be commended for her persistence and patience. She believed that, legalities aside, she was entitled to a remedy and was prepared to allow me the time to obtain the result she needed through my contacts with two administrations, two agencies of government, several cabinet ministers and her own union.

CORRECTIONS BRANCH – DEPARTMENT OF JUSTICE

"A TYPICAL YEAR"

#83-2000-30-45 & #83-2000-30-50

Two inmates of a provincial correctional centre complained to my office that they had been stripped naked, searched, and then placed in an "enclosed cell" overnight without being provided any articles of clothing or a mattress and blanket. The two enclosed cells located at the far end of a basement corridor consist of only concrete walls, an elevated concrete surface that serves as a cot and a concrete encased toilet bowl. The door is solid steel with a small opening through which the staff can view the interior of the cell.

The two inmates involved in this complaint had a history of severe behavioural problems in this institution, both during their current sentences and during previous incarcerations. Their disciplinary sheets are long and include breaches of most institutional rules. Each had been particularly obstreperous during the evenings in question and had threatened to commit suicide by slashing their wrists and had set fire to bedding and towels. After they continued to act out in these cells, each was then stripped and moved to the enclosed cells. They remained in the enclosed cells until the following morning with neither clothing or bedding.

When interviewed by my investigator, both inmates readily admitted their actions and voiced their contempt for the corrections system and staff.

The staff in the centre also candidly admitted that the incidents were true.

While I had no quarrel with the decision to place the inmates in the enclosed cells in these circumstances, it appeared oppressive for them to remain naked overnight in a bare concrete cell. Our review of the centre's policies confirmed that the unit was to be only used in emergency conditions for an inmate's protection, for the protection of other inmates or staff or as a behaviour control facility for serious instances of misbehaviour. The guidelines also stated that inmates housed in this unit were to be stripped and searched, *then issued fresh clothing* and placed in their cells. While resort to the enclosed cells was consistent with the policy guidelines the staff had failed to follow the clothing requirements of the policy.

I communicated my finding that there had been a breach of the centre's policy and recommended that any inmate placed in an enclosed cell be provided with fresh clothing, and that should he be required to remain there overnight, that he be provided with bedding.

The response from the department indicated that there was some ambiguity in the local policy in that there was no direct reference to the provision of fresh clothing and bedding in the enclosed cells and that new orders would be issued to remove any doubt on the subject.

#83-2000-30-48

In the summer of 1983 we received a complaint from an inmate of the Prince Albert Correctional Centre who had recently been transferred from the Regina Correctional Centre. His personal property, which was to be sent to him at the new institution, did not arrive and appeared to have been lost in the move.

My investigation concluded that the employees of the Regina Correctional Centre had not followed the proper procedures for itemizing and logging personal effects and were the direct cause of this inmate's property being lost.

Through the involvement of my office, this inmate had his possessions replaced by the institution except for personal photographs and letters.

#83-23000-30-04

Prior to its closing in the spring of 1983, the Wilderness Challenge Camp near Hudson Bay, Saskatchewan, was operated by the Regina Correctional Centre. Inmates, who were considered good candidates for the program, were sent to this Wilderness Camp to serve a part of their sentence. Most of the time there were between 17 and 23 people at the Camp.

Early in 1983, the Camp cook, (an inmate from the Regina Correctional Centre who volunteered for this duty) contacted my office concerning problems with food at the Camp. He was concerned that the food being shipped to the Wilderness Challenge Camp was in such massive proportions that it could not be properly stored or used. One example that he provided was the shipment of 300 pounds of turnips to the Camp from the Regina Correctional Centre. His concern was not only the storage problems but that this amounted to approximately 15 pounds of turnips for each resident of the Camp. He was clearly not looking forward to his share.

He also claimed that 5-gallon pails of jam, all of the same kind, had also been shipped to the Camp. He felt that smaller shipments would permit some variety and, again, ease his storage problems. Bacon, although appreciated, was shipped in one solid block, making it difficult to prepare as there was no cutting equipment available in the Camp. However, this was not nearly as challenging as receiving 50 pounds of frozen liver, which had to be thawed before being cut into useable portions. Once thawed, it had to be cooked or it would spoil. The cook was also concerned that fresh produce was not reaching the Camp as often as necessary to maintain an adequate diet for staff and inmates.

In the course of interviewing centre authorities, it was learned that the purchasing system had recently been changed due to budget constraints and that food could no longer be purchased locally. This change made it necessary for all food to be ordered by, and shipped from, the Regina Centre. It would appear that some of the problems were the result of the Camp management and the Correctional Centre experiencing some growing pains in adapting to the new system. I was assured by the centre director that this problem would be rectified and it was, shortly before this Camp was permanently closed.

WIZARD OF ID By Brant Parker and Johnny Hart

THERE'S A HAIR IN MY SWILL!
WE'LL SEND IT BACK ...OKAY?
OKAY

By Permission of Johnny Hart and
News Group Chicago, Inc.

THE WORKERS' COMPENSATION BOARD — A VERY SIGNIFICANT YEAR

This year was a significant one because of the issues we resolved, the number of compensation cases we closed and the sensitivity demonstrated by the Board. On the other hand, it was a usual year in terms of complaint volume as the 149 complaints we received in 1983 is very close to the 140 we received in 1982.

In 1983, we concluded 173 compensation files by either referring persons to the Workers' Advocates for assistance in exhausting their internal appeals (82) or by completing investigations (91). By way of comparison, we closed 144 compensation cases in 1982 and 108 in 1981. This increase in our productivity is of particular significance as there is not another category of our work that is as time consuming and consistently complex as our compensation investigations.

Of the 91 cases that we closed in 1983, we resolved at an early stage, or rectified after recommendation, 25 of those cases, or 27.5%. We also found 65 cases (71.4%) to be not substantiated and one case where we lacked the jurisdiction to continue our investigation.

Some of the system issues we resolved this year can be seen in the case summaries set out later in this comment. To provide some detail as to the monetary and other consequences of our work in 1983, I would also direct the attention of the members to the following chart of the cases we resolved and rectified during the year.

WORKERS' COMPENSATION COMPLAINTS RESOLVED AND RECTIFIED IN 1983

	STAGE IN OUR PROCESS					RESULT		
File No.	Before Investi-gation	During Investi-gation	After Report to the Board	After Report to Minister	After Report to Cabinet	Non-Monetary	Retroactive $'s	Increase in Ongoing monthly $'s
80-16030-10-60		x					$ 3,300.00	$ —
80-16030-10-05				x			19,120.62	—
80-16030-10-19				x			5,024.31	—
80-16030-10-74				x			16,550.00	440.00/mo.
81-16030-10-10				x		x	—	—
81-16030-10-26					x	x	—	—
81-16030-10-76				x			32,051.38	384.69/mo.
81-16030-10-77				x			5,662.79	—
81-16030-10-38					x		2,994.15	—
82-16030-10-47			x				12,490.17	351.02/mo.
82-16030-10-99			x			x	—	—
82-16030-10-113			x				2,291.90	243.10/mo.
82-16030-10-97			x				32,911.60	1,489.48/mo.
82-16030-10-122			x				8,041.90	764.39/mo.
82-16030-10-139			x				4,740.04	—
82-16030-10-77	x					x	—	—
83-16030-10-55			x			x	—	—
83-16030-10-52			x				10,620.28	382.58/mo.
83-16030-10-15		x					93.00	—
83-16030-10-18		x					216.30	—
83-16030-10-24		x					4,150.50	475.83/mo.
83-16030-10-87		x					*1,610.09	— *
83-16030-10-95	x					x	—	—
83-16030-10-111	x					x	—	—
83-16030-10-127	x					x	—	—
TOTALS — 25	4	5	8	6	2	8	$158,679.03	$4,531.09/mo.

*Subject to further review.

#81-16030-10-76

We, initially received a complaint from this injured worker in January of 1981. As he had not contacted the Workers' Advocate for assistance in dealing with his problem, I referred him to the Advocate. Several months later, he returned to my office as the Workers' Advocate had concluded that they could not be of further assistance. An investigation of his complaint was then initiated by my staff.

The complaint quite simply was that the pension which this individual was receiving did not adequately recognize the serious nature of the injuries that he suffered in the fall of 1970. He had been employed as an equipment operator with the Government of Saskatchewan and since the accident, had found it extremely difficult to return to full-time employment in his occupation. At those times when he was able to return to work, he usually could not continue on a permanent basis, due to recurring back problems.

During the course of this investigation, it became apparent that this man's compensation at the time of injury, had been based on his earnings at the time of the accident. While I considered this rate to be correct, we noted that the same rate had not been used in later years when his pension entitlement and wage loss entitlements were calculated by the Board. Instead, even though he had only been working for approximately five months of the year, his five months earnings had been averaged over an entire year to arrive at a wage base to be used for the purpose of calculating pension and wage loss.

Additionally, our investigation also disclosed that the pension awarded to this worker had *not* been made retroactive to the date of his accident.

Since there was evidence that this worker had experienced problems almost continuously since the accident, it was my opinion that the pension should have been made retroactive to the date of accident. The pension which he had been awarded was a 25% permanent-partial disability.

In February of 1982, I gave notice to the Board of my tentative findings with respect to this case, as required by section 21(3) of **The Ombudsman Act**. My report concentrated upon the two issues which have been previously identified as well as two other relatively minor issues.

The initial response from the Board was not supportive of my recommendation. Instead, the Workers' Compensation Board defended their original decisions and merely provided a copy of a Bill then before the legislature to indicate that an amendment to the legislation involving one of the issues was imminent.

As I did not consider the response from the Board to be adequate, I prepared a Report and Recommendation to the minister-in-charge pursuant to section 24 of **The Ombudsman Act**. This report was presented in January of 1983. Approximately two weeks later, I was informed by the Board Chairman that my major recommendations had been accepted. In particular, the man's pension and his wage loss were being recalculated, based on the same rate of earnings that had originally been used to calculate his compensation benefits. In addition, the Board had awarded the pension for his permanent-partial disability to be retroactive to the date of his accident. I received a copy of the Board's detailed calculations on this worker's entitlements in March of 1983. The cheque which was presented to this individual was in excess of $30,000. In addition, this worker will now be receiving a monthly supplement of $224 for his revised wage loss. The latter amount is reviewed annually to age 65.

While this person still suffers from his accident, he is now receiving more realistic benefits from the Workers' Compensation Board.

#81-16030-10-10

In February of 1981, the office of the Workers' Advocate referred a woman to my office for the purpose of reviewing her complaint against the Workers' Compensation Board. This person was 55 years of age and had been employed in labouring and housekeeping positions since the age of 14. She had a physical defect which had been with her since birth, but stated that this disability had not interferred with her ability to do labouring types of work. At the time she approached my office, she stated she was unable to work due to injuries which she had experienced in an industrial accident in 1974. I decided to investigate this lady's complaint.

Our review of the Board file confirmed that our complainant had been injured in 1974 and that she subsequently had received a 5% permanent-partial disability rating from the Board. Although the physicians at the Board felt she could return to her normal occupation as a housekeeper, our complainant had disagreed and attempted to obtain lighter employment. She was successful in obtaining lighter employment and continued at this work until January 1980. At that time, she was laid off due to her inability to perform her duties because of a recurrence of the symptoms from her 1974 injury. The Workers' Compensation Board demonstrated some initial reluctance to accept her claim, but ultimately did accept the claim as a recurrence of her previous injury.

During a medical examination in April of 1980, our complainant had been informed by her physician that her condition had worsened since 1974. This physician's written report also suggested the presence of an increased level of disability, beyond the previously assessed 5%. Similarly, in May of 1980, the Board's medical officer estimated her permanent-partial disability to be in excess of the previously rated 5%. During this time, our complainant was receiving partial compensation and pension.

On November 20, 1980, a medical board was established to review her medical condition. Even though the chairman of the medical board was the same doctor who had examined her in April of 1980, the conclusions of the medical board were that her permanent-partial disability was still only 5%. At the same time, there was no indication of any improvement whatever in this individual's condition between April and November of 1980. For her part, our complainant insisted that the medical board did not conduct a thorough examination of her injury, but rather concentrated their attention on her "birth defect". She believed that she had experienced more than a 5% disability and that her ongoing disability was preventing her from obtaining employment in her previous occupation as a housekeeper and/or cleaner.

After our review of her file and her circumstances, it was my opinion that there was conflicting medical information concerning the extent of the disability being experienced by this worker and that a Medical Review Panel should be convened to reach a final determination on these apparent discrepancies. The Board was advised of my conclusions in June of 1981.

In August of 1981, the Board responded indicating that they were unwilling to accept my recommendation. It was suggested that the Medical Review Panel which had been held in 1976 had assessed the 5% permanent disability award and that the more recent medical board did not feel that it had the authority to change the rating of the 1976 Medical Review Panel.

In order to more accurately assess this worker's physical disabilities and restrictions, my office retained the services of a neurologist in Saskatoon who subsequently, involved another physician in her case. Our complainant made two trips to Saskatoon in the spring of

1982 for further examination and assessment of her difficulties. Detailed reports were then sent by these physicians to my office and the Board. It appeared from the reports that the specialist in Saskatoon had raised some relevant medical questions and issues concerning this worker's condition. I therefore asked the Board to reconsider my original recommendation in light of the more recent medical evidence.

In the fall of 1982, I was informed that the Workers' Compensation Board was still unwilling to convene a Medical Review Panel to make a final determination on this case. I then made one further request of the Chairman of the Board for reconsideration of this matter, but once again the reply was in the negative.

As my recommendation concerning this lady had been repeatedly rejected, I prepared a formal Report on this case for the minister-in-charge of the Workers' Compensation Board. This Report and several others, were submitted to Mr. McLaren in March of 1983.

I am pleased to report that I was advised in June of 1983 that the Workers' Compensation Board was prepared to grant a new Medical Review Panel for this claimant. On this basis, I concluded my file with the knowledge that the worker would be examined in a comprehensive way by a team of specialists who would make a final determination on her case.

#82-16030-10-97

This complaint is another example of the progress we have experienced with the Workers' Compensation Board in 1983.

In the fall of 1981, our client had to resign his long-term employment at 60 years of age, because of a knee difficulty. His knee had begun giving him problems in 1977 and surgery was required in 1981 and further surgery in the spring of 1982.

Our client contacted the Board after his 1981 surgery inquiring about benefits. At this time, the Board refused compensation as they felt his knee problems were as a result of a 'bow-legged' condition which was not accident or employment related. My office was able to confirm through expert medical opinion that his condition was as a result of arthritis in the knee and that it was not a condition that had always been present.

In result, the Board was satisfied that his arthritic condition was work related and retroactive benefits in the amount of $32,911.60

were paid to this worker for the benefits he had been denied. Additionally, this gentleman is on monthly benefits of [illegible]9.48 until age 65.

COMMENT

In some provinces, the Ombudsman has sufficient budget to obtain independent medical advice where it is required in compensation cases. I am not so fortunate. This case provides another excellent example of the need for independent medical advice to be available to an Ombudsman on a regular basis.

#80-16030-10-05

On January 23, 1980, I received a letter from a widow who advised that her late husband had died of a heart attack while on the job and that all compensation benefits had been refused. The complainant asked me to assist her as best I could.

A review of the Workers' Compensation file confirmed, among other things, that the complainant's husband died on the 7th day of December 1962 at his place of employment.

Following his death, an investigation was conducted by the Workers' Compensation Board and on January 3, 1963, the Board determined that the death was not compensable as:

> ". . . there was no evidence that his death was precipitated by strain or other accident during his employment."

Following that decision, this complainant launched a series of appeals to the Board culminating in 1979 when an appeal was launched on her behalf by the Workers' Advocate. On October 2, 1979, the Board reviewed the entire history of the claim and concluded that while there was no question that the worker died during the course of his employment, it was not satisfied that the death arose out of his employment as the worker had done nothing "unusual" on the day that he suffered his heart attack.

Upon review of the files it was noted that no autopsy had been performed at the time of death and also, that the Board had received an opinion from a physician that clearly stated that it was his considered opinion that the heart attack *was* precipitated by his work.

Upon review of *The Workers' Compensation Act*, it became apparent to me that where an injury occurs in the course of the employment, *a presumption arises that it arose out of the employment*. Unless the presumption can be rebutted by evidence to the contrary, the worker should be given the benefit of any doubt.

As there appeared to be no evidence to the contrary and as the evidence that was available supported the widow's claim, I recommended to the Board that they accept responsibility for the death and pay compensation benefits to my complainant.

The Board declined to accept my recommendation and I, pursuant to section 24 of **The Ombudsman Act**, prepared and forwarded a formal Report to the minister in charge of the Workers' Compensation Board.

In May of 1983, I received correspondence from the Board which indicated that the Board was reviewing its policy with respect to heart attacks and that their review *might* have an effect on the claim of this widow.

On June 6, 1983, the Board specifically reviewed our complainant's claim and decided that compensation benefits were to be awarded as the presumption created by the Act had not been refuted in the circumstances of this claim.

On August 5, 1983, I was advised by the Board that they had paid compensation to my complainant.

COMMENT

This case is a good illustration of the kind of breakthroughs that occurred in 1983 on a number of major and long-term compensation issues that had been outstanding between the Board and my office. It also reaffirms my belief that the major character strength that an Ombudsman must bring to his job is persistence. For example, it took us three and one-half years and much effort to resolve this issue in our complainant's favour.

This case also has implications broader than this specific claim as the Board's policy and approach on these cases has been altered to clearly recognize that the onus is on the Board to disprove heart attack claims when they occur at work.

The Board's policy now reads as follows:

> "The Board Members have dealt with several claims relating to fatalities recently. It was the opinion of the Members that not enough emphasis is being placed on the presumption of compensability in claims where death occurred on the work site.

> Generally speaking, where a fatality occurs on the work site, or a worker subsequently dies after being found there without being able to communicate, the presumption is that death arose out of the employment. Before disallowing a claim for death benefit entitlement, it will be necessary for the burden of proof to show that death did not, in fact, arise out of the employment.
>
> Such proof might be determined from an autopsy report or investigation, but clearly, such claims are not to be disallowed unless the burden of proof is met."

DEPARTMENT OF AGRICULTURE

"A LOSS AT CABINET"

#80-1000-30-05

The material that follows is a summary of one of the eight reports I submitted to cabinet in 1983. My recommendation was rejected even though the whole case turns on a legal question and our legal view of the matter was supported by independent legal advice.

COMPLAINT

THAT the Department of Agriculture unlawfully refused to transfer lands to the estate of the late F. L. even though the lands in question were the subject of a binding agreement of purchase and sale.

BACKGROUND

In May of 1980, I opened a temporary office in Humboldt and during the course of that evening, met with an individual who asked for an investigation of a complaint that he had been pursuing since 1968. Mr. L. indicated that certain leased land had become available for sale by the Department of Agriculture in 1968 and that his late father had paid a down payment and entered into an agreement of purchase and sale with regard to these lands. He further indicated that the Department of Highways had subsequently located gravel deposits on the lands and that the Department of Agriculture refused to transfer the lands to his father, after the department became aware of this fact. The purchase monies had been paid to the department and these monies exchanged hands several times in the course of an early debate as to whether Mr. L. Sr., was entitled to the lands. At present, the purchase monies are still in an escrow account of the department as the late Mr. L. and his son have consistently refused to accept their return. Mr. L. had doggedly pursued the matter with former Ministers of Agriculture, the former Minister of Justice and Attorney General of Canada, and local lawyers. Notice of my intention to initiate an investigation of this complaint was provided on June 18, 1980.

INVESTIGATION

It was soon apparent that the issue was exclusively a legal one and that it turned on the interpretation to be given to the applicable sections of the Provincial Land Regulations. Part VII, section 4 of the regulation states:

> "No person shall have any rights, possessory or otherwise whatsoever, in the provincial lands until the instrument evidencing a disposition of such lands, or the rights therein, *is executed and delivered* by the minister, *or by an officer of the department authorized under the Act to execute the same . . .*"
>
> (emphasis added)

The other relevant sections of the regulations were:

> "7.(6)—Provincial lands which in the opinion of the minister, are required for or in connection or conjunction with any public project or other purpose shall not be sold.
>
> (7)—The minister may at any time *prior to the delivery of the executed agreement* withhold any land from sale and may refuse to offer for sale any land for any reason that to him seems sufficient, provided this subsection shall not apply to sales made under section 3."
>
> (emphasis added)

The department's position in 1968 and subsequently, was that the sale was not finalized because of the provisions of subsections (6) and (7) of section 7. While both parties acknowledged that the agreement of purchase and sale was executed, the department has consistently held to the view that the agreement was not 'delivered' within the meaning of that word in the regulations. I, for reasons set out later in this report, was of the opposite opinion.

The agreement of sale was signed by Mr. L. Sr., and the Director of Lands Branch. However, the agreement of purchase and sale was not 'physically' delivered to the elder Mr. L. and never physically left the department. On April 15, 1970, the department sought legal advice from the Deputy Attorney General on how to return the purchase money. He concluded that the legal situation was governed by subsection (6) of section 7 of the regulations and that the agreement was not binding on the department. It was also suggested that the department in future determine whether any portion of lands are required for public purposes *prior* to sending out an agreement for sale.

Having carefully reviewed the legal issues, I was satisfied that the legal position of the Department of Agriculture and the then Department of the Attorney General was not correct and communicated this conclusion to the Deputy Minister of Agriculture in October of 1980. In short, an agreement in law is 'delivered' when a person who executes a document *intends* to be bound by it and he need not physically part with the possession of the document for it to be 'delivered'.

Given my legal conclusions, I communicated my view of the matter to the department along with the following recommendations:

RECOMMENDATIONS

1. THAT the Department of Agriculture transfer to the estate of F. L., that portion of the aforementioned property less the amount expropriated by the Department of Highways for the use of sand and gravel for the original contract price, $2,069.75.
2. THAT, in addition, the Department of Agriculture pay by way of compensation to the L. estate, compensation for gravel taken from the above described lands at the rates in existence at the time of removal, from the date of the original agreement.

DEPARTMENT'S POSITION

By way of response, the department alluded to quarrying regulations by the Department of Mineral Resources, and suggested that this aspect be explored. The department also took the position that they would oppose my recommendations.

As we were unable to locate, in our discussions with the Department of Mineral Resources, any legislative restriction on the transfer of lands where sand and gravel existed, I was not impressed with the response.

COMMENT

At this point, it appeared that there was a legal impasse and that my legal advice was in direct conflict with the legal advice the department had received and, I must assume, was continuing to receive. In order to assist in the resolution of the problem, I sought and obtained an independent legal opinion on the merits of this particular file.

On November 19, 1981, I wrote the Deputy Minister of Agriculture supplying him with a copy of the opinion and indicating that the opinion favoured our interpretation of the legal issue. I also indicated that if I didn't receive a favourable response I would have no choice but to provide the Minister of Agriculture with a formal Report.

By letter dated December 29, 1981, the deputy minister indicated that while he did not agree that an improper decision had been made by the department, he conceded that the action could have been misinterpreted and misunderstood by a potential purchaser. He indicated a willingness to sell that portion of the lands that has no known gravel deposits. By letter dated January 6, 1982, I indicated that the department's willingness to accept recommendation #1 was not a new one as similar assurances had been received by Mr. L. in 1972 and that my recommendations would be the subject of a formal Report to his minister.

I should emphasize that the area of debate was a legal one and if the department acted on the best legal advice available at the time, there is no question of departmental fault. The only issue in this file was the need for the department to accept the proper legal position and our recommendations.

At this point, the then Minister of Agriculture was provided with a formal Report and Recommendations. While the Report resulted in some movement in Mr. L.'s favour by the department, it was still not sufficient in my view, or that of our complainant. The minister was prepared to transfer the lands remaining after quarrying was complete as well as the lands where there were no gravel deposits but *not* to pay compensation for the gravel that had been removed over the years.

As this did not constitute sufficient compliance with my recommendations, I referred the issue to cabinet in March of 1983. By letter dated November 17, 1983, I was advised that cabinet supported the department's rejection of my recommendations. As cabinet's refusal to accept my recommendations is the final formal step in my process, I am including this case in this report in the hope that the members will give the matter some consideration and communicate their views to the government.

PART V

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STATISTICS

TOTAL COMPLAINTS RECEIVED — 1983

	Against Saskatchewan Departments and Agencies	Not Against Saskatchewan Departments and Agencies	Total
January	70	156	226
February	89	118	207
March	112	160	272
April	91	103	194
May	120	115	235
June	118	97	215
July	78	133	211
August	96	122	218
September	89	115	204
October	78	98	176
November	112	120	232
December	109	66	175
	1,162	1,403	2,565

COMPLAINTS OTHER THAN AGAINST SASKATCHEWAN DEPARTMENTS AND AGENCIES
January 1, to December 31, 1983

Category	Number	%
Consumer	379	27
Federal	225	16
Local Government	92	6.5
Professional	71	5.5
Private	208	14.7
Courts/Legal	180	12.8
Family	11	.7
Other	237	16.8
	1,403	100%

METHOD OF LODGING COMPLAINTS AGAINST SASKATCHEWAN DEPARTMENTS AND AGENCIES 1983

	Letter	Phone	Walk In	Temporary Office	Other	Total
January	13	43	12	—	2	70
February	16	57	15	—	1	89
March	19	66	26	—	1	112
April	13	64	14	—	—	91
May	12	86	20	—	2	120
June	22	69	13	11	3	118
July	16	43	16	2	1	78
August	17	55	15	5	2	94
September	17	52	13	8	1	91
October	10	59	6	3	—	78
November	17	57	22	15	1	112
December	16	73	20	—	—	109
	188	724	192	44	14	1,162

COMPLAINTS RECEIVED AGAINST SASKATCHEWAN DEPARTMENTS AND AGENCIES — 1983

Department — Agency Board and Commission	Department Code No.	Totals
Agriculture — General	1000-10	5
— Family Farm Improvement Branch	1000-20	1
— Lands Branch	1000-30	16
Agriculture Implements Board	1010-00	1
Milk Control Board	1040-00	2
Saskatchewan Crop Insurance Board	1050-00	5
Saskatchewan FarmStart Corporation	1060-00	6
Saskatchewan Farm Purchase Program	1200-00	3
Department of Justice — General	2000-10	9
— Court Services Branch	2000-20	8
— Corrections Branch	2000-30	79
Administrator of Estates	2010-00	1
Land Titles	2020-00	4
Criminal Injuries Compensation Board	2040-00	5
Saskatchewan Community Legal Services Commission	2060-00	3
Saskatchewan Police Commission	2070-00	3
Saskatchewan Human Rights Commission	2100-00	3
Consumer and Commercial Affairs — General	3000-10	4
— Insurance and Real Estate Branch	3000-30	3
— Licensing and Investigation	3000-40	4
— Rentalsman	3000-50	33
— Rent Appeal Commission	3000-60	7
— Provincial Mediation Board	3000-80	2

Department — Agency Board and Commission	Department Code No.	Totals
Advanced Education and Manpower — General	4000-10	9
— Wascana Institute	4000-20	2
— Apprenticeship and Standards	4000-30	1
Community Colleges	4500-10	1
Education — General	7000-10	4
Teacher's Superannuation Commission	7030-00	2
Saskatchewan Centre of the Arts	7060-00	1
Environment — General	8000-10	9
Department of Finance	10000-10	2
Department of Revenue and Financial Services — General	11000-10	11
— Revenue Division	11000-30	2
Provincial Auditor	11010-00	1
Saskatchewan Development Fund	11030-00	1
Supply and Services — General	12000-10	1
Saskatchewan Government Printing	12010-00	2
Health — General	13000-10	16
— Psychiatric Services Branch	13000-20	3
— Saskatchewan Aids to Independent Living	13000-30	1
— Saskatchewan Hospital Services Plan	13000-60	6
— Saskatchewan Prescription Drug Plan	13000-70	2
— Continuing Care Division	13000-80	5
Alcoholism Commission	13010-00	2
Saskatchewan Medical Care Insurance Commission	13020-00	6
South Saskatchewan Hospital Centre	13040-00	2
Highways and Transportation — General	14000-10	10
Highway Traffic Board	14010-00	14
Intergovernmental Affairs	15030-00	1
Labour — General	16000-10	14
— Workers' Advocate	16000-20	1
— Labour Services Division	16000-40	23
— Occupational Health and Safety Division	16000-50	2
— Safety Services Branch	16000-60	2
Labour Relations Board	16010-00	1
Workers' Compensation Board	16030-10	149
Liquor Licensing Commission	16050-00	2
Saskatchewan Energy and Mines	17000-10	1
Surface Rights Arbitration Board	17020-00	1
Potash Corporation of Saskatchewan	17030-00	3
Saskatchewan Mining Development Corporation	17050-00	1
Saskatchewan Gas and Oil Corporation	17060-00	1
Rural Development — General	18000-10	2
Local Government Board	18030-00	2
Provincial Planning Appeal Board	18040-00	1
Saskatchewan Assessment Appeal Board	18060-00	9
Saskatchewan Housing Corporation	18100-00	34

Department — Agency Board and Commission	Department Code No.	Totals
Municipal Housing Authority	18200-00	4
Urban Affairs — General	18300-10	8
— Property Improvement Grant	18300-20	8
Northern Saskatchewan — General	19000-10	4
— Municipal Services Branch	19000-60	2
— Economic Development Branch	19000-70	1
Saskatchewan Research Council	21010-00	2
Parks and Renewable Resources	22000-10	18
Saskatchewan Forest Products Corporation	22010-00	1
Department of Tourism and Small Business	22030-00	6
Social Services — General	23000-10	17
— Community and Personal Services	23000-20	17
— Regional Services Division	23000-40	179
Core Services	23010-00	1
Social Services Appeal Board (Provincial)	23020-00	3
Public Service Commission — General	24000-10	8
Public Employees Benefits Agency	24020-00	3
Sask Tel — General	25000-10	48
Saskatchewan Government Insurance — General	26000-10	32
— Motor Licencing Division	26000-20	22
— Claims General	26000-30	157
Saskatchewan Power Corporation	27000-10	48
		1,162

MUNICIPAL DISTRIBUTION OF COMPLAINTS AGAINST SASKATCHEWAN DEPARTMENTS AND AGENCIES — 1983

Aberdeen	2
Antler	1
Arborfield	1
Assiniboia	1
Aylesbury	1
Balcarres	1
Battleford	2
Beechy	1
Bengough	1
Bethune	2
Biggar	2
Birch Hills	1
Bracken	1
Buffalo Narrows	3
Cando	1
Canora	6
Canwood	1
Carlyle	1
Carmel	1
Carrot River	2
Central Butte	1
Choiceland	1
Christopher Lake	3
Churchbridge	1
Claydon	1
Coronach	2
Craven	1
Creighton	3
Cudworth	1
Cumberland House	2
Dalmeny	1
Danbury	1
Debden	1
Delisle	1
Denare Beach	2
Eastend	1
Edam	1
Esk	1
Esterhazy	2
Estevan	7
Eston	3
Flaxcombe	1
Fleming	2
Foam Lake	2
Fort Qu'Appelle	2
Garrick	3
Grandora	1
Green Lake	4
Grenfell	1
Guernsey	1
Gull Lake	1
Hague	1
Hanley	2
Hepburn	3
Herbert	2
Hudson Bay	4
Humboldt	4
Ile-a-la-Crosse	1
Indian Head	1
Invermay	2
Kamsack	3
Kelfield	1
Kennedy	1
Kerrobert	1
Kindersley	4
Kinistino	3
Kinley	2
La Loche	2
La Ronge	5
Lake Lenore	1
Landis	2
Langbank	1
Langenburg	3
Langham	1
Lanigan	2
Lashburn	2
Leader	1
Leask	3
Lemberg	2
Leoville	2
Leross	1
Leroy	1
Lestock	1
Lloydminster	4
Loreburn	2
Love	5
Mair	1
Mankota	4
Manor	1
Marchwell	1
Marquis	2
Martensville	8
Maymont	1
McKague	1

Meacham	1
Meadow Lake	8
Medstead	1
Melfort	3
Melville	3
Meota	1
Midale	2
Middle Lake	2
Milestone	1
Moose Jaw	20
Moosomin	3
Morse	2
Mossbank	2
Naicam	1
Neville	1
Nipawin	2
Norquay	3
North Battleford	23
Onion Lake	1
Osler	1
Outlook	3
Oxbow	3
Paddockwood	2
Paradise Hill	1
Parkside	1
Pelican Narrows	5
Pennant	1
Perdue	1
Pilot Butte	3
Ponteix	1
Porcupine Plain	1
Preeceville	2
Prelate	1
Prince Albert	57
Punnichy	1
Radisson	2
Rama	1
Regina	291
Rocanville	2
Rosetown	2
Rosthern	1
St. Walburg	1
Sandy Bay	3
Saskatoon	389
Scott	1
Scout Lake	1
Sedley	1
Semans	1
Shellbrook	2
Shipman	2
Smeaton	1
Southey	1
Stony Rapids	1
Stoughton	1
Strasbourg	1
Swift Current	17
Tisdale	4
Togo	1
Torquay	2
Truax	1
Unity	2
Uranium City	2
Val Marie	2
Vanscoy	1
Victoire	1
Viscount	1
Wadena	1
Wakaw	1
Wapella	2
Warman	2
Watrous	4
Watson	1
Wawota	4
Welwyn	2
Weyburn	7
White Fox	3
White Spruce	1
Whitewood	1
Willow Bunch	2
Windthorst	1
Wollaston Lake	4
Yellow Grass	3
Yorkton	13

Out of Province

Alberta	10
British Columbia	6
Manitoba	4
Ontario	3

Out of Country

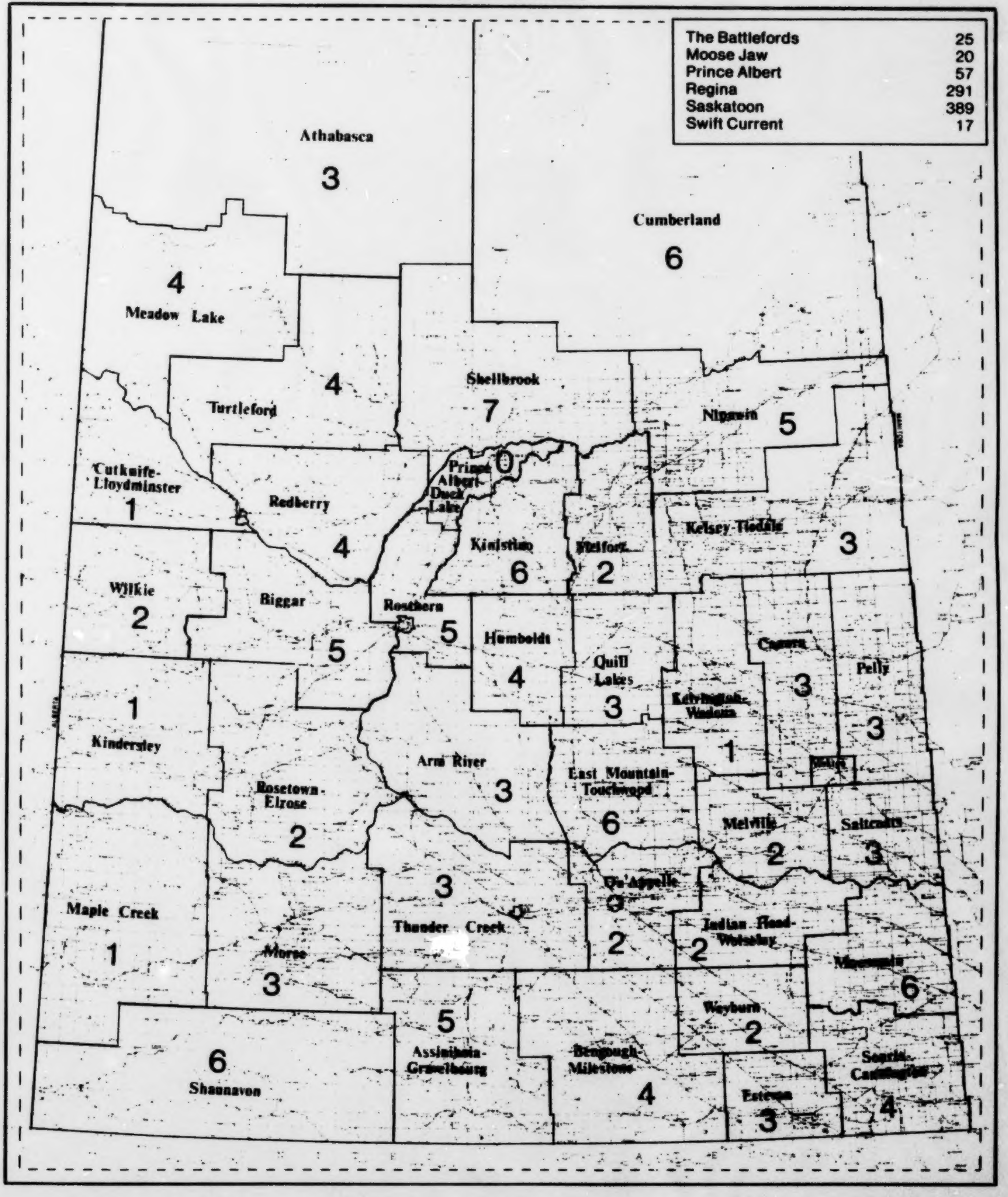
California	1
England	1

GEOGRAPHIC DISTRIBUTION OF COMPLAINTS AGAINST SASKATCHEWAN DEPARTMENTS AND AGENCIES — 1983

PROVINCIAL CONSTITUENCIES

The Representation Act 1981

(64 Constituencies)



The Battlefords	25
Moose Jaw	20
Prince Albert	57
Regina	291
Saskatoon	389
Swift Current	17

Athabasca
3
Cumberland
6
4
Meadow Lake
Turtleford
4
Shellbrook
7
Nipawin
5
Cutknife-Lloydminster
1
Redberry
4
Prince Albert-Duck Lake
0
Kinistino
6
Melfort
2
Kelsey-Tisdale
3
Wilkie
2
Biggar
5
Rosthern
5
Humboldt
4
Quill Lakes
3
Kelvington-Wadena
1
Canora
3
Pelly
3
1
Kindersley
Arm River
3
East Mountain-Touchwood
6
Rosetown-Elrose
2
Melville
2
Saltcoats
3
Qu'Appelle
2
3
Thunder Creek
Maple Creek
1
Morse
3
Indian Head-Wolseley
2
Moosomin
6
5
Assiniboia-Gravelbourg
Bengough-Milestone
4
Weyburn
2
6
Shaunavon
Estevan
3
Souris-Cannington
4

COMPLAINTS CLOSED AGAINST SASKATCHEWAN DEPARTMENTS AND AGENCIES — 1983

Department - Agency Board and Commission	Department Code No.	Resolved Without Investigation	Rectified After Investigation	Not Substan't	No Juris	Discont.	Totals
Agriculture - General	1000-10	1	—	4	4	2	11
— Family Farm Improvement Branch	1000-20	—	—	2	—	—	2
— Lands Branch	1000-30	3	2	10	1	1	17
Agriculture Implements Board	1010-00	—	—	1	—	—	1
Lands Allocation Appeal Board	1020-00	1	—	9	—	—	10
Milk Control Board	1040-00	1	—	—	—	—	1
Saskatchewan Crop Insurance Board	1050-00	1	1	2	—	2	6
Saskatchewan FarmStart Corporation	1060-00	—	—	3	—	1	4
Saskatchewan Land Bank Commission	1090-00	—	—	6	—	—	6
Saskatchewan Farm Purchase Program	1200-00	—	—	1	2	—	3
Department of Justice — General	2000-10	—	—	6	1	3	10
— Court Services Branch	2000-20	—	1	1	—	6	8
— Corrections Branch	2000-30	9	7	57	4	23	100
Administrator of Estates	2010-00	—	—	2	—	—	2
Land Titles	2020-00	—	—	2	1	1	4
Criminal Injuries Compensation Board	2040-00	—	—	3	1	1	5
Saskatchewan Community Legal Services Commission	2060-00	—	—	—	—	2	2
Saskatchewan Police Commission	2070-00	—	—	1	—	2	3
Saskatchewan Human Rights Commission	2100-00	—	1	—	—	1	2
Consumer and Commercial Affairs — General	3000-10	—	—	2	1	4	7
— Insurance and Real Estate Branch	3000-30	—	—	—	—	2	2
— Licensing and Investigation	3000-40	—	—	3	—	3	6
— Rentalsman	3000-50	2	2	5	1	23	33
— Rent Appeal Commission	3000-60	1	1	—	1	1	4
— Provincial Mediation Board	3000-80	—	—	—	—	1	1

Department - Agency Board and Commission	Department Code No.	Resolved Without Investigation	Rectified After Investigation	Not Substan't	No Juris	Discont.	Totals
Advanced Education and Manpower — General	4000-10	1	1	3	3	2	10
— Wascana Institute	4000-20	—	—	1	—	1	2
— Apprenticeship and Standards	4000-30	—	—	—	—	1	1
Community Colleges	4500-10	—	—	—	—	2	2
Co-operation and Co-op Development	5000-10	—	—	1	—	—	1
Education — General	7000-10	—	—	1	2	2	5
Teacher's Superannuation Commission	7030-00	1	—	1	—	—	2
Saskatchewan Centre of the Arts	7060-00	—	—	—	—	1	1
Environment — General	8000-10	1	—	4	—	6	11
Department of Finance	10000-10	2	—	—	—	—	2
Department of Revenue and Financial Services — General	11000-10	1	4	1	1	5	12
— Government Finance Office	11000-20	—	2	—	—	—	2
— Revenue Division	11000-30	—	1	2	—	1	4
Provincial Auditor	11010-00	—	—	—	—	1	1
Saskatchewan Development Fund	11030-00	—	—	—	—	1	1
Supply and Services — General	12000-10	—	1	—	—	2	3
Saskatchewan Government Printing	12010-00	—	—	—	1	—	1
Health — General	13000-10	3	1	3	4	6	17
— Psychiatric Services Branch	13000-20	—	1	2	—	4	7
— Saskatchewan Dental Plan	13000-50	—	—	1	—	—	1
— Saskatchewan Hospital Services Plan	13000-60	1	2	2	1	4	10
— Saskatchewan Prescription Drug Plan	13000-70	—	—	1	—	—	1
— Continuing Care Division	13000-80	—	—	1	1	4	6
Alcoholism Commission	13010-00	—	—	—	1	1	2
Saskatchewan Medical Care Insurance Commission	13020-00	—	2	2	—	5	9
South Saskatchewan Hospital Centre	13040-00	—	—	1	—	1	2
Highways and Transportation — General	14000-10	1	—	4	—	10	15
Highway Traffic Board	14010-00	1	2	4	1	9	17

Saskatchewan Transportation Company	14030-00	—	—	—	—	1	1
SEDCO	15020-00	—	—	—	—	1	1
Labour — General	16000-10	—	2	3	—	5	10
— Labour Services Division	16000-40	2	6	18	1	10	37
— Occupational Health and Safety Division	16000-50	—	—	—	—	2	2
— Safety Services Branch	16000-60	—	—	—	—	2	2
Labour Relations Board	16010-00	—	—	—	—	1	1
Workers' Compensation Board	16030-10	4	21	65	1	82	173
Liquor Licensing Commission	16050-00	—	—	1	—	—	1
Saskatchewan Energy and Mines	17000-10	—	—	—	—	1	1
Surface Rights Arbitration Board	17020-00	—	—	1	—	—	1
Potash Corporation of Saskatchewan	17030-00	—	—	—	—	2	2
Saskatchewan Mining Development Corporation	17050-00	—	—	2	—	—	2
Saskatchewan Gas and Oil Corporation	17060-00	—	—	1	—	—	1
Rural Development — General	18000-10	1	—	1	—	—	2
Local Government Board	18030-00	—	—	—	1	—	1
Provincial Planning Appeal Board	18040-00	—	—	1	1	—	2
Saskatchewan Assessment Appeal Board	18060-00	—	—	5	—	1	6
Municipal Employees' Superannuation Commission	18090-00	—	—	1	—	—	1
Saskatchewan Housing Corporation	18100-00	2	4	6	—	9	21
Municipal Housing Authority	18200-00	—	1	2	—	1	4
Urban Affairs — General	18300-10	—	—	2	2	2	6
— Property Improvement Grants	18300-20	1	2	—	—	4	7
Northern Saskatchewan							
— General	19000-10	—	—	1	—	2	3
— Resource Development Branch	19000-20	—	—	3	—	—	3
— Social Services Branch	19000-30	—	1	—	1	—	2
— Health Services Branch	19000-40	—	—	—	—	1	1
— Project Management Branch	19000-50	—	—	4	—	—	4
— Municipal Services Branch	19000-60	—	1	2	1	—	4
— Economic Development Branch	19000-70	—	—	3	—	—	3
Saskatchewan Research Council	21010-00	—	1	1	—	1	3
Parks and Renewable Resources	22000-10	—	1	7	4	2	14

Department - Agency Board and Commission	Department Code No.	Resolved Without Investigation	Rectified After Investigation	Not Substan't	No Juris	Discont.	Totals
Saskatchewan Forest Products Corporation	22010-00	—	1	—	—	—	1
Department of Tourism and Small Business	22030-00	—	—	1	1	3	5
Social Services — General	23000-10	—	4	4	—	10	18
— Community and Personal Services	23000-20	—	3	6	4	9	22
— Community Affairs Branch	23000-30	—	1	4	—	2	7
— Regional Services Division	23000-40	11	15	16	21	93	156
— Social Services Branch	23000-50	—	—	7	—	2	9
Social Services Appeal Board (Provincial)	23020-00	—	—	5	—	2	7
Public Service Commission — General	24000-10	—	1	7	1	5	14
Public Service Superannuation Board	24010-00	—	—	1	—	—	1
Public Employees Benefits Agency	24020-00	—	—	1	—	1	2
Sask Tel — General	25000-10	7	12	15	1	23	58
Saskatchewan Government Insurance — General	26000-10	2	2	9	4	10	27
— Motor Licencing Division	26000-20	2	4	5	1	10	22
— Claims General	26000-30	12	25	53	8	61	159
Saskatchewan Power Corporation	27000-10	4	9	15	1	25	54
		79	149	434	86	534	1,282

SUMMARY OF COMPLAINTS CLOSED AGAINST SASKATCHEWAN DEPARTMENTS AND AGENCIES — 1982

	Rectified	Not Substantiated	No Jurisdiction	Discontinued	Other	Recommendation Not Accepted	Total
1977	—	—	—	9	—	—	9
1978	1	3	—	13	—	—	17
1979	5	7	1	11	—	—	24
1980	17	40	2	27	—	—	86
1981	65	169	14	45	—	—	293
1982	101	215	37	467	4	—	824
	189	434	54	572	4	—	1,253

SUMMARY OF COMPLAINTS CLOSED AGAINST SASKATCHEWAN DEPARTMENTS AND AGENCIES — 1983

	Resolved Without Investigation	Rectified After Investigation	Not Substantiated	No Jurisdiction	Discontinued	Recommendation Not Accepted	Total
1977	—	—	—	—	4	—	4
1978	—	1	5	—	2	—	8
1979	—	4	7	1	4	—	16
1980	2	8	25	—	12	—	47
1981	6	8	44	1	8	—	67
1982	7	42	150	8	34	—	241
1983	64	86	203	76	470	—	899
	79	149	434	86	534	—	1,282

CHAPTER O-4.

An Act to provide for the appointment of a Person to Investigate Administrative decisions or acts of Departments of the Government and certain other Organizations and to define the Person's duties, functions and powers.

Short title

1. This Act may be cited as *The Ombudsman Act.*

Interpretation

2. In this Act:

"agency of the government"

(*a*) "agency of the government" means any board, commission, association or other body of persons, whether incorporated or unincorporated, all the members of which or all the members of the board of management or board of directors of which:

(*i*) are appointed by an Act or by an order of the Lieutenant Governor in Council; or

(*ii*) if not so appointed, in the discharge of their duties are public officers or servants of the Crown, or for the proper discharge of their duties are, directly or indirectly, responsible to the Crown;

"department"

(*b*) "department" means a department or branch of the executive government of the province;

"minister"

(*c*) "minister" means a member of the Executive Council. 1972, c. 87, s. 2.

Appointment

3.—(1) There shall be appointed, as an officer of the Legislature, a commissioner for investigation to be called an Ombudsman.

(2) The person appointed as Ombudsman shall be a Canadian citizen and, subject to section 5, he shall be appointed by the Lieutenant Governor in Council on the recommendation of the Legislative Assembly.

(3) Unless he sooner resigns, dies or is removed from office, the Ombudsman shall hold office for a term of five years from the date of his appointment and may be reappointed for one additional term of five years.

(4) The Ombudsman may at any time resign his office by writing addressed to the Speaker of the Assembly or to the President of the Executive Council if there is no Speaker or if the Speaker is absent from the province. 1972, c. 87, s. 3.

Removal or suspension

4. The Lieutenant Governor in Council on a resolution of the Assembly shall remove the Ombudsman from his office or suspend him according to the resolution. 1972, c. 87, s. 4.

Suspension when Legislature not in session

5.—(1) When the Legislature is not in session the Lieutenant Governor in Council may suspend the Ombudsman for disability, neglect of duty, misconduct or bankruptcy proved to the satisfaction of the Lieutenant Governor in Council, but the suspension shall not continue beyond the end of the next ensuing session of the Legislature.

(2) Where the office of Ombudsman is vacant or the Ombudsman is suspended under subsection (1), the Lieutenant Governor in Council shall appoint an acting Ombudsman to hold office until a person is appointed as Ombudsman under section 3 or the suspension has been dealt with by the Assembly. 1972, c. 87, s. 5.

Salary

6.—(1) The Ombudsman shall be paid:

(*a*) a salary equal to the salary fixed from time to time by the Lieutenant Governor in Council pursuant to subsection 5(1) of *The Provincial Court Act* to be paid to a judge of the Provincial Court of Saskatchewan; and

(*b*) an allowance for travelling and other expenses incurred by him in the performance of his duties that may be approved by the Lieutenant Governor in Council.

(2) Sums required for the purposes of this Act may be paid out of moneys appropriated by the Legislature for the purpose. 1972, c. 87, s. 6; 1973-74, c. 74, s. 1; 1974-75, c. 32, ss. 2, 3; 1976, c. 41, s. 1; 1976-77, c. 54, s. 1; 1978, c. 40, s. 1; 1979, c. 49, s. 2.

Application of certain Acts to Ombudsman and staff

7.—(1) The Ombudsman is not subject to *The Public Service Act*, except section 54 thereof, and he is subject to *The Public Service Superannuation Act*.

(2) The staff for the Ombudsman shall consist of such persons or positions as are required for the proper administration of this Act.

(3) *The Public Service Act* and *The Public Service Superannuation Act* apply to the members of the staff of the Ombudsman. 1972, c. 87, s. 7.

Oath of office

8. The Ombudsman shall, before entering upon the duties of his office, take and subscribe before the Speaker of the Assembly or the Clerk of the Legislative Assembly the following oath:

OATH OF OFFICE.

"I, , do swear that I will faithfully and impartially perform and discharge the duties and functions of Ombudsman and that I will not, except as provided in *The Ombudsman Act,* divulge any information received by me in the exercise of my powers or the performance of my duties and functions under that Act". 1972, c. 87, s. 8.

Same

9. Every member of the staff of the Ombudsman shall, before entering upon the duties of his office, take and subscribe before the Ombudsman the following oath:

OATH OF OFFICE.

"I, , do swear that I will faithfully and impartially perform and discharge the duties and functions of my office as an employee of the Ombudsman and that I will not, except as provided in *The Ombudsman Act,* divulge any information received by me in the exercise of my powers or the performance of my duties and functions under that Act". 1972, c. 87, s. 9.

Secrecy

10.—(1) The Ombudsman and every member of his staff shall maintain secrecy in respect of all matters that come to his knowledge in the exercise of his powers and the carrying out of his duties and functions under this Act.

(2) Notwithstanding subsection (1) or any oath taken under this Act, the Ombudsman may disclose in a report made by him under this Act any matter that he considers necessary to disclose in order to establish grounds for his conclusions and recommendations. 1972, c. 87, s. 10.

Delegation of powers

11.—(1) With the prior approval of the Lieutenant Governor in Council the Ombudsman may, by writing under his hand, delegate to any member of his staff any of his powers under this Act except the power of delegation under this section and the power to make a report under this Act.

(2) A delegation may be made to a specified person of the staff of the Ombudsman or to the holder for the time being of a specified office or to the holders of offices of a specified class of the staff.

(3) Every delegation is revocable at will and no delegation prevents the exercise of any power by the Ombudsman.

(4) A delegation may be made subject to such restrictions and conditions as the Ombudsman thinks fit and may be made either generally or in relation to a particular case or class of cases.

(5) Until a delegation is revoked, it continues in force according to its tenor and where the Ombudsman who made the delegation ceases to hold office the delegation shall continue to have effect as if it was made by his successor.

(6) Where the Ombudsman has delegated a power under this section, the person to whom the power is delegated shall, when required to do so, produce evidence of his authority to exercise the power. 1972, c. 87, s. 11.

Powers, functions and duties

12.—(1) It is the duty of the Ombudsman and he has power to investigate any decision or recommendation made, including any recommendation made to a minister, or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by a department or agency of the government or by any officer, employee or member thereof in the exercise of any power, duty or function conferred or imposed on him by any Act whereby any person is or may be aggrieved.

(2) The Ombudsman may make an investigation of a matter either on a written complaint made to him by any person or of his own motion and he may commence an investigation notwithstanding that the complaint may not on its face be against a decision, recommendation, act or omission mentioned in subsection (1).

(3) A committee of the Assembly may at any time refer to the Ombudsman for investigation and report any petition or matter that is before the committee for consideration and the Ombudsman shall:

- (*a*) subject to any special directions of the committee, investigate the petition or matter referred to him so far as it is within his jurisdiction; and
- (*b*) make such report to the committee as he thinks fit.

(4) The Lieutenant Governor in Council may at any time refer to the Ombudsman for investigation and report any matter relating to the administration in or by any department or agency of the government or by any officer, employee or member thereof and the Ombudsman shall:

(*a*) subject to any special directions of the Lieutenant Governor in Council, investigate the matter referred to him so far as it is within his jurisdiction; and

(*b*) make such report to the Lieutenant Governor in Council as he thinks fit. 1972, c. 87, s. 12.

Complaints to Ombudsman

13.—(1) Every complaint to the Ombudsman shall be made by a person who is, or who before the date of the event that gave rise to the complaint was, a resident of Saskatchewan.

(2) A complaint under this Act may be made in respect of any matter that arises after this Act comes into force or that arose within the twelve months immediately preceding the coming into force of this Act.

(3) No complaint shall be investigated by the Ombudsman unless the complaint was made within twelve months after the event that gave rise to the complaint occurred.

(4) Notwithstanding subsection (3), if the Ombudsman for special reasons to be certified by him concludes that a complaint should be investigated, he may investigate the complaint regardless of when the event that gave rise to the complaint ocurred. 1972, c. 87, s. 13.

Ombudsman not restricted by provisions of other Acts

14. The Ombudsman may exercise his powers and shall carry out his duties and functions under this Act notwithstanding anything in any other Act which provides:

(*a*) that any decision, recommendation, act or omission that he is investigating is final or that no appeal lies in respect thereof; or

(*b*) that no proceeding or decision of the department, agency of the government, officer, employee or person whose decision, recommendation, act or omission it is shall be challenged, reviewed, quashed or called into question. 1972, c. 87, s. 14.

Restrictions on jurisdiction

15.—(1) Nothing in this Act authorizes the Ombudsman to investigate:

(*a*) any decision, recommendation, act, order or omission of the Assembly, a committee of the Assembly, the Lieutenant Governor in Council, the Executive Council or a member or committee of the Executive Council;

(*b*) any decision, order or omission of a court, a judge of a court, a referee or local master of a court, a magistrate or a justice of the peace made or given in any action or proceeding in the court or before the judge, referee, local master, magistrate or justice of the peace;

(*c*) any award, decision, recommendation or omission of an arbitrator, or board of arbitrators, established by or under any Act;

(*d*) any decision, recommendation, act or omission in respect of which there is under an Act a right of appeal or objection or a right to apply for a review of the merits of the case to any court or tribunal constituted by or under an Act, whether or not that right of appeal, objection or application has been exercised in the particular case and whether or not any time prescribed for the exercise of that right has expired, unless the Ombudsman is satisfied that in the particular case it would have been unreasonable to expect the complainant to resort to the court or tribunal, but in that case the investigation shall not commence until after the time for the exercise of that right to appeal, object or apply has expired;

(*e*) any decision, recommendation, act or omission of any person acting as solicitor or counsel for the Crown in relation to any proceedings;

(*f*) any decision, recommendation, act or omission of a deputy minister, an acting deputy minister, associate deputy minister or assistant deputy minister when acting as such or of any person who by virtue of his appointment or actual employment is expressly or by necessary implication directly responsible to a minister;

(*g*) any decision, recommendation, act, order or omission of any department or agency of the government, or an officer, employee or person, in relation to any matter arising between the department, agency, officer, employee or person, and the government of another province or the Government of Canada or a municipality or school board.

(2) Where a dispute arises as to whether a person mentioned in clause (*f*) of subsection (1) is a person who by virtue of his appointment or actual employment is expressly or by necessary implication responsible to a minister, the dispute shall be referred to and be determined by the Attorney General and the decision of the Attorney General is final. 1972, c. 87, s. 15.

Question of jurisdiction to investigate

16.—(1) Where any question arises respecting the jurisdiction of the Ombudsman to investigate any case or class of cases under this Act, he may apply to the Court of Queen's Bench or a judge of the court sitting in chambers for a declaratory order determining the question.

(2) Notice of an application under subsection (1) shall be served upon the Attorney General not less than fifteen days before the date on which the application is to be heard. 1972, c. 87, s. 16.

Certain correspondence with Ombudsman privileged

17. Notwithstanding any Act, where a letter written by a person in custody on a charge for an offence or after conviction for an offence, or by an inmate of a hospital, mental hospital, facility or institution operated by or under the direction of the government, or by any person in custody of another person for any reason, is addressed to the Ombudsman, it shall be forwarded, unopened, to the Ombudsman by the person for the time being in charge of the place where the writer of the letter is detained or in which he is an inmate or by the person having custody of the writer. 1972, c. 87, s. 17.

Refusal to investigate

18.—(1) The Ombudsman may, in his discretion, refuse to investigate or cease to investigate a complaint if:

- (*a*) it relates to a decision, recommendation, act or omission of which the complainant had knowledge for more than a year before the complaint is received by the Ombudsman;
- (*b*) in his opinion it is frivolous, vexatious, not made in good faith or concerns a trivial matter;
- (*c*) in his opinion upon a balance between the public interest and the person aggrieved, it should not be investigated or the investigation should not be continued;
- (*d*) in his opinion the circumstances of the case do not warrant investigation;
- (*e*) the complainant does not have a sufficient personal interest in the subject matter of the complaint; or
- (*f*) during the course of an investigation it appears to him:
  - (*i*) that under the law or existing administrative practices the complainant has adequate remedy or right of appeal, other than a petition to the Legislature, whether or not the complainant has availed himself of it; or
  - (*ii*) that, having regard to all the circumstances of the case, further investigation is unnecessary.

(2) This section does not apply to an investigation or report required to be made under subsection (3) or (4) of section 12. 1972, c. 87, s. 18.

Notice of cessation etc., of investigation

19. Where the Ombudsman decides not to investigate, or to cease to investigate, a complaint, he shall inform the complainant of his decision and may, if he thinks fit, state his reasons therefor. 1972, c. 87, s. 19.

Notice of investigation

20.—(1) Before investigating any matter under this Act the Ombudsman shall notify the deputy minister of the department or the administrative or executive head of the agency of the government affected, as the case may be, of his intention to make the investigation.

(2) The notice shall be in writing and shall set forth the nature of the complaint, if any, received by the Ombudsman.

(3) The Ombudsman may in his discretion at any time during or after an investigation consult with the minister who is concerned in the matter of the investigation.

(4) On the request of the minister in charge of the department or agency of the government or in any case where an investigation relates to any recommendation made to a minister, the Ombudsman shall consult the minister after making the investigation and before forming a final opinion of any matter referred to in subsections (1) and (2) of section 24.

(5) Where, during or after an investigation, the Ombudsman is of the opinion that there is evidence of breach of duty or misconduct on the part of any officer or employee of any department or agency of the government, he shall refer the matter to the minister in charge of the department or agency of the government, as the case may require. 1972, c. 87, s. 20.

Conduct of investigation

21.—(1) Every investigation by the Ombudsman under this Act shall be conducted in private.

(2) The Ombudsman may hold hearings and hear or obtain information from any person he thinks fit and may make such inquiries as he thinks necessary.

(3) The Ombudsman is not required to hold a hearing and no person is entitled as of right to be heard by the Ombudsman but if at any time it appears to the Ombudsman that there are sufficient grounds for his making a report or recommendation in respect of any matter that may adversely affect any department, agency of the government or person, he shall give to that department, agency or person an opportunity to make representations in respect of the matter and the department, agency or person may make representations in respect of the matter by counsel. 1972, c. 87, s. 21.

Ombudsman may require information and examine persons

22.—(1) Subject to section 23, the Ombudsman may require any person, other than a minister or a person mentioned in clause *(f)* of subsection (1) of section 15, who in his opinion is able to give any information relating to any matter being investigated by him:

(*a*) to furnish information to him; and

(*b*) to produce any document or thing that, in his opinion, relates to the matter being investigated and that may be in the possession or under the control of that person;

whether or not that person is an officer, employee or member of the department or agency of the government and whether or not the document, paper or thing is in the custody or under the control of a department or agency of the government.

(2) The Ombudsman may summon before him and examine under oath:

(*a*) any person, other than a minister or a person mentioned in clause *(f)* of section 15, who is an officer, employee or member of any department or agency of the government and who in the opinion of the Ombudsman is able to give any information relating to any matter being investigated by him;

(*b*) any complainant; and

(*c*) any other person who in the opinion of the Ombudsman is able to give any information relating to any matter being investigated by him;

and for that purpose may administer an oath.

(3) Every examination by the Ombudsman under subsection (2) shall be deemed a judicial proceeding for the purposes of section 120 of the *Criminal Code*.

(4) Subject to section 23:

(*a*) a rule of law that authorizes or requires the withholding of any document, paper or thing or the refusal to answer any question on the ground that the disclosure or answer would be injurious to the public interest does not apply in respect of any investigation by or proceedings before the Ombudsman;

(*b*) no provision of an Act requiring a person to maintain secrecy in relation to, or not to disclose information relating to, any matter shall apply in respect of an investigation by the Ombudsman and no person who is required by the Ombudsman to furnish any information or to produce any document, paper or thing or who is summoned by the

Ombudsman to give evidence, shall refuse to furnish the information, produce the document, paper or thing or to answer questions on the ground of such a provision.

(5) Except on the trial of a person for perjury, no statement made by the person or any other person in the course of an investigation by, or any proceedings before, the Ombudsman is admissible in evidence against any person in any court, at any inquiry or in any other proceedings and no evidence in respect of proceedings before the Ombudsman shall be given against any person.

(6) No person shall be prosecuted for an offence against any Act by reason of his compliance with any requirement of the Ombudsman under this section. 1972, c. 87, s. 22.

Disclosure restricted

23. Where the Attorney General certifies to the Ombudsman that the giving of any information, the answering of any question or the production of any document, paper or writing might involve the disclosure of:

(*a*) the deliberations of the Executive Council; or

(*b*) proceedings of the Executive Council or a committee of the Executive Council relating to matters of a secret or confidential nature the disclosure of which would be injurious to the public interest;

the Ombudsman shall not require the information or answer to be given or the document, paper or writing to be produced, as the case may be, but shall report the receipt of the certificate in his next annual report. 1972, c. 87, s. 23.

Report on investigation

24.—(1) Where, after making an investigation under this Act, the Ombudsman is of the opinion:

(*a*) that a decision, recommendation, act or omission that is the subject matter of the investigation appears to have been:

- (*i*) contrary to law;
- (*ii*) unreasonable, unjust, oppressive, improperly discriminatory or was in accordance with a rule of law, a provision of an Act, or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory;
- (*iii*) based in whole or in part on a mistake of law or fact; or
- (*iv*) wrong;

(*b*) that in making a decision or recommendation, or in doing or omitting an act, a power or right has been exercised:

- (*i*) for an improper purpose;
- (*ii*) on irrelevant grounds; or

(*iii*) on the taking into account of irrelevant considerations; or

(*c*) that reasons should have been given for a decision, recommendation, act or omission that was the subject matter of the investigation;

the Ombudsman shall report his opinion and his reasons therefor to the appropriate minister and to the department or agency of the government concerned and may make such recommendations as he thinks fit.

(2) Without limiting the generality of subsection (1), in making a report under that subsection the Ombudsman may recommend:

(*a*) that a matter should be referred to the appropriate authority for further consideration;

(*b*) that an omission should be rectified;

(*c*) that a decision should be cancelled or varied;

(*d*) that any practice on which a decision, recommendation, act or omission was based should be altered or reviewed;

(*e*) that any law on which a decision, recommendation, act or omission was based should be reconsidered;

(*f*) that reasons should be given for any decision, recommendation, act or omission; or

(*g*) that any other steps should be taken.

(3) This section does not apply to an investigation or report required to be made under subsection (3) or (4) of section 12. 1972, c. 87, s. 24.

Notice of proposed steps

25.—(1) Where the Ombudsman makes a recommendation under section 24, he may request the department or agency of the government to notify him within a specified time of the steps that it has taken or proposed to take to give effect to his recommendations.

(2) If, within a reasonable time after a request respecting recommendations is made under this section, no action is taken that seems to the Ombudsman to be adequate or appropriate the Ombudsman after considering the comments, if any, made by or on behalf of the department or agency of the government affected may submit a report of the matter, including a copy of the report containing the recommendation, to the Lieutenant Governor in Council and may thereafter mention the report in his next annual report to the Assembly. 1972, c. 87, s. 25.

Review of Ombudsman's decision

26.—(1) Where the Ombudsman makes a recommendation under section 24 and no action that seems to the Ombudsman to be adequate and appropriate is taken thereon within a reasonable time, the Ombudsman shall inform the complainant of his recommendation and make such comments on the matter as he thinks fit.

(2) The Ombudsman shall in any event inform the complainant, in such manner and at such time as he thinks proper, of the result of the investigation. 1972, c. 87, s. 26.

Proceedings not subject to review

27. No proceeding of the Ombudsman is invalid for want of form and, except on the ground of lack of jurisdiction, no proceeding or decision of the Ombudsman shall be challenged, reviewed, quashed or called into question in any court. 1972, c. 87, s. 27.

Proceedings against Ombudsman prohibited

28.—(1) No proceedings lie against the Ombudsman or against any member of his staff for anything he may do, report or say in the course of the exercise or performance, or intended exercise or performance, of his powers, duties and functions under this Act unless it is shown that he acted in bad faith.

(2) Neither the Ombudsman nor any member of his staff shall be called in any court or in any proceedings of a judicial nature in respect of anything coming to his knowledge in the exercise or performance of his powers, duties and functions under this Act.

(3) Anything said or any information supplied or any document, paper or thing produced by any person in the court relating to an investigation by or proceedings before the Ombudsman under this Act is privileged in the same manner as if the investigation or proceedings were proceedings in a court.

(4) For the purposes of *The Libel and Slander Act*, any report made by the Ombudsman under this Act shall be deemed to be privileged and a fair and accurate report thereon in a newspaper or a braodcast shall be deemed to be privileged. 1972, c. 87, s. 28; 1976-77, c. 81, s. 5.

Entry of premises

29.—(1) For the purposes of this Act, the Ombudsman may at any time enter upon the premises occupied by any department or agency of the government and, subject to section 12, carry out therein any investigation within his jurisdiction.

(2) Before entering upon any premises under subsection (1), the Ombudsman shall notify the deputy minister or administrative head of the department or agency of the government that occupies the premises of his intention to conduct an investigation. 1972, c. 87, s. 29.

Report by Ombudsman

30.—(1) The Ombudsman shall make and submit to the Speaker of the Assembly an annual report respecting the exercise of his powers and the performance of his duties and functions under this Act, which shall be laid before the Assembly within fifteen days from the commencement of the session next following the end of the year for which the report is made.

(2) The Ombudsman may from time to time in the public interest or in the interest of any person, department or agency of the government publish reports relating:

(*a*) generally to the exercise of his powers and the performance of his duties and functions under this Act; or

(*b*) to any particular case investigated by him;

whether or not the matters to be dealt with in any such report have been the subject of a report to the Assembly. 1972, c. 87, s. 30.

Rules for guidance

31.—(1) The Assembly may:

(*a*) of its own volition; or

(*b*) upon the recommendation of the Lieutenant Governor in Council;

make rules for the guidance of the Ombudsman in the exercise of his powers and performance of his duties and functions.

(2) Subject to this Act and any rules made under subsection (1), the Ombudsman may determine his procedure and the procedure for the members of his staff in the exercise of the powers conferred and the performance of the duties and functions imposed by this Act. 1972, c. 87, s. 31.

Offences and penalties

32. Any person who:

(*a*) without lawful justification or excuse wilfully obstructs, hinders or resists the Ombudsman or any other person in the exercise or performance of his powers, duties and functions under this Act;

(*b*) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Ombudsman or any other person under this Act; or

(*c*) wilfully makes any false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise or performance of his powers, duties and functions under this Act;

is guilty of an offence and liable on summary conviction to a fine not exceeding $500 or to imprisonment for a term not exceeding three months or to both fine and imprisonment. 1972, c. 87, s. 32.

Attorney General may intervene

33. The Attorney General or counsel appointed by him for the purpose may at any time, without leave of the court or judge, intervene in any action or proceedings taken in any court under section 27 or 28 and no order for costs for or against the Attorney General shall be made as a result of the intervention. 1972, c. 87, s. 33.

Act to provide additional remedies

34. The provisions of this Act are in addition to the provisions of any other Act or rule of law under which any remedy, right of appeal or objection is provided for any person, or any procedure is provided for inquiry into or investigation of any matter and nothing in this Act limits or affects any such remedy, right of appeal, objection or procedure. 1972, c. 87, s. 34.